

# State of Florida

DEPARTMENT OF STATE • DIVISION OF CORPORATIONS

I certify that the following is a true and correct copy of Articles of Incorporation of SEAWINDS OF NEW SMYRNA BEACH OWNERS ASSOCIATION, INC., a corporation not for profit organized under the Laws of the State of Florida, filed on June 20, 1978, as shown by the records of this office.

The charter number for this corporation is 743324.

GIVEN under my hand and the Great  
Seal of the State of Florida, at  
Tallahassee, the Capital, this the  
21st day of June, 1978.



*James A. Smathers*  
SECRETARY OF STATE

APPROVED  
AND  
FILED

JUL 20 11 44 AM 1978

FLORIDA DEPT. OF STATE  
CORPORATIONS DIVISION  
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION  
OF  
SEAWINDS OF NEW SMYRNA BEACH  
OWNERS ASSOCIATION INC.

The undersigned by these Articles associate themselves for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, and certify as follows:

ARTICLE 1

Name and Definitions

The name of the corporation shall be SEAWINDS OF NEW SMYRNA BEACH OWNERS ASSOCIATION, INC., for convenience the corporation shall be referred to in this instrument as the Association, these Articles of Incorporation as Articles, and the Bylaws of the Association as Bylaws.

ARTICLE 2

Purpose

The purpose for which the Association is organized is to provide an entity pursuant to F. S. 718.111 for the operation of SEAWINDS OF NEW SMYRNA BEACH, a condominium, located upon the following lands in Volusia County, Florida:

The South 150 feet of the North 550 feet of U. S. Lot 1, Section 6, Township 18 South, Range 35 East, lying East of the road right-of-way of State Road 1A1, of the Public Records of Volusia County, Florida.

Subject to easement in favor of Frank A. Ford, Trustee, for a walk-way to the Atlantic Ocean over the Northerly three (3) feet of the captioned real estate, as set forth in instrument dated July 1st, 1974, and recorded in Official Record Book 1735, Page 1006, Public Records of Volusia County, Florida.

ARTICLE 3

Powers

The powers of the Association shall include and shall be governed by the

following provisions:

3.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the laws of Florida that are not in conflict with the terms of these Articles.

3.2 Enumeration. The Association shall have all of the powers and duties set forth in the Condominium Act except as limited by these Articles and the Declaration of Condominium, and all of the powers and duties reasonably necessary to operate the condominium pursuant to the Declaration and it may be amended from time to time, including but not limited to the following:

- a. To make and collect assessments against members as unit owners to defray the costs, expenses and losses of the condominium.
- b. To use the proceeds of assessments and charges in the exercise of its powers and duties.
- c. To buy or lease both real and personal property for condominium use, and to sell or otherwise dispose of property so acquired.
- d. To maintain, repair, replace and operate the condominium property and property acquired or leased by the Association for use by unit owners.
- e. To purchase insurance upon the condominium property and insurance for the protection of the Association and its members and unit owners.
- f. To reconstruct and repair improvements after casualty and to construct additional improvements of the condominium property.
- g. To make and amend reasonable regulations respecting the use and appearance of the property in the condominium.
- h. To approve or disapprove the leasing, transfer, mortgaging, ownership and possession of units as may be provided by the Declaration of Condominium and the Bylaws.
- i. To enforce by legal means the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws of the

Association and the Regulations for the use of the property in the condominium.

j. To contract for the management of the condominium and to delegate to the contractor all powers and duties of the Association except those that are specifically required by the Declaration of Condominium to have approval of the Board of Directors or the membership of the Association.

k. To contract for the management or operation of portions of the common elements susceptible to separate management or operation, and to grant leases of those portions for this purpose.

l. To employ personnel to perform the service required for proper operation of the condominium and to purchase or lease a unit in the condominium from its owner in order to provide living quarters for a manager of the condominium.

3.3 Purchase of units. The Association shall have the power to purchase a unit or units in the condominium in strict accordance with the provisions of the Declaration of Condominium.

3.4 Condominium property. All funds and the titles of all properties acquired by the Association and their proceeds shall be held in trust for the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

3.5 Distribution of income. The Association shall make no distribution of income to its members, directors or officers.

3.6 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration of Condominium and the Bylaws.

#### ARTICLE 4

##### Members

4.1 Membership. The members of the Association shall consist of all of the record owners of units in the condominium, and after termination

of the condominium shall consist of those who are members at the time of the termination and their successors and assigns.

4.2 Evidence. After approval of the transfer, or of the ownership, of a unit in the manner required by the declaration of condominium, change of membership in the Association shall be established by (a) recording in the public records of Volusia County, Florida, a certificate of the Association stating the approval required by the declaration, (b) recording in the public records of Volusia County, Florida, a deed or other instrument establishing a public record of the transfer of the title substantiating the membership, and (c) delivery to the Association of a certified copy of the recorded instruments. The owner receiving title of the unit by those instruments will be a member of the Association and the membership of the prior owner will be terminated.

4.3 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit for which that share is held.

4.4 Voting. A member of the Association shall be entitled to at least one vote for each unit owned by him. The exact number of votes to be cast by owners of a unit and the manner of exercising voting rights shall be determined by the Bylaws of the Association.

## ARTICLE 5

### Directors

5.1 Number and qualification. The affairs of the Association shall be managed by a board consisting of the number of directors determined by the Bylaws, but not less than three directors; and in the absence of that determination shall consist of three directors. Directors need not be members of the Association.

5.2 Duties and powers. All of the duties and powers of the Association existing under the Condominium Act, Declaration of Condominium, these

Articles and Bylaws shall be exercised exclusively by the board of directors, its agents, contractors or employees, subject only to approval by unit owners when that is specifically required.

5.3 Election; removal. Directors of the Association shall be elected at a annual meeting of the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the board of directors shall be filled in the manner provided by the Bylaws.

5.4 Term of first directors. Except as may be provided by statute, the first election of directors by members of the Association other than the developer of the condominium shall not be held until after the developer has closed the sales of all of the units of the condominium, or until the developer elects to terminate its control of the condominium, or until after whichever occurs first. The directors named in these Articles shall serve until their successors are elected by the members other than the developer; and any vacancies in their number occurring before the time for the election of their successors by the members other than the developer, shall be filled by the remaining first directors, or if there are none, then by the developer.

5.5 First directors. The names and addresses of the members of the first board of directors who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

| <u>Name</u>           | <u>Address</u>                                         |
|-----------------------|--------------------------------------------------------|
| JOHN FRANCIS McMULLAN | 1210 Springdale Road, N. E.<br>Atlanta, Georgia 30306  |
| DAVID ROSS VAUGHAN    | 3368 Pinestream N. W.<br>Atlanta, Georgia 30327        |
| TERRY M. FOSTER       | 6511 Windyrush Road<br>Charlotte, North Carolina 28211 |

## ARTICLE 6

### Officers

The affairs of the Association shall be administered by the officers designated in the Bylaws. The officers shall be elected by the board of directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the board of directors. The names and addresses of the officers who shall serve until their successors are designated by the board of directors are as follows:

| <u>Name</u>           | <u>Address</u>                                         | <u>Office</u>  |
|-----------------------|--------------------------------------------------------|----------------|
| JOHN FRANCIS McMULLAN | 1210 Springdale Road, N.E.<br>Atlanta, Georgia 30306   | President      |
| DAVID ROSS VAUGHAN    | 3368 Pinestream N.W.<br>Atlanta, Georgia 30327         | Vice-President |
| JOHN FRANCIS McMULLAN | 1210 Springdale Road, N.E.<br>Atlanta, Georgia 30306   | Treasurer      |
| TERRY M. FOSTER       | 6511 Windyrush Road<br>Charlotte, North Carolina 28211 | Secretary      |

## ARTICLE 7

### Indemnification

Every director and officer of the Association, and every member of the Association serving the Association at its request, shall be indemnified by the Association against all expenses and liabilities including counsel fees; reasonably incurred by or imposed upon him in connection with any proceeding or any settlement of any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association or by reason of his serving or having served the Association at its request, whether or not he is a director or officer or is serving at the time the expenses or liabilities are incurred; provided that in the event of a settlement before entry of judgment, and also when the person concerned is adjudged guilty of willful misfeasance or malfeasance in the

performance of his duties, the indemnification shall apply only when the board of directors approves the settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which that person may be entitled.

## ARTICLE 8

### Bylaws

The first Bylaws of the Association shall be adopted by the board of directors and may be altered, amended or rescinded by the directors and members in the manner provided by the Bylaws.

## ARTICLE 9

### Amendments

Amendments to these Articles of Incorporation shall be proposed and adopted in the following manner:

9.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

9.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by the board of directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing the approval is delivered to the secretary at or prior to the meeting. The approvals must be either

a. by not less than 75% of the entire membership of the board of directors and by not less than 75% of the votes of the entire membership of the Association; or

b. by not less than 80% of the votes of the entire membership of the Association.

9.3 Limitation. Provided, however, that no amendment shall make

changes in the qualifications for membership nor in the voting rights or property rights of members, nor any change in §§ 3.3 to 3.6 of Article 3, entitled "Powers", without approval in writing by all members and the joinder of all record owners of mortgages upon units. No amendment shall be made that is in conflict with the Condominium Act or the Declaration of Condominium.

9.4 Recording. A copy of each amendment shall be accepted and certified by the Secretary of State and be recorded in the Public Records of Volusia County, Florida.

#### ARTICLE 10

##### Term

The term of the Association shall be perpetual.

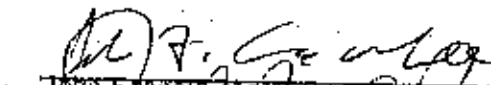
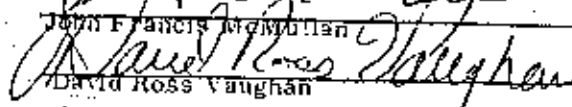
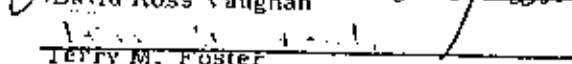
#### ARTICLE 11

##### Subscribers

The names and addresses of the subscribers to these Articles of Incorporation are as follows:

| <u>Name</u>           | <u>Address</u>                                         |
|-----------------------|--------------------------------------------------------|
| JOHN FRANCIS McMULLAN | 1210 Springdale Road, N.E.<br>Atlanta, Georgia 30306   |
| DAVID ROSS VAUGHAN    | 3368 Pinestream N.W.<br>Atlanta, Georgia 30327         |
| TERRY M. FOSTER       | 6511 Windyrush Road<br>Charlotte, North Carolina 28211 |

IN WITNESS WHEREOF, the subscribers have affixed their signatures  
this 4<sup>th</sup> day of July, 1978.

  
\_\_\_\_\_  
John Francis McMullan  
  
\_\_\_\_\_  
David Ross Vaughan  
  
\_\_\_\_\_  
Terry M. Foster

STATE OF GEORGIA )

COUNTY OF FULTON )

JOHN FRANCIS McMULLAN and DAVID ROSS VAUGHAN

appeared before me, and after being duly sworn they acknowledged that they executed the foregoing Articles of Incorporation for the purposes expressed in the Articles on this 4<sup>th</sup> day of May, 1978.

Susan N. Arrington  
Notary Public

Notarial Seal

Notary Public, Georgia, State of La-  
My commission expires Sept. 22, 1981

STATE OF FLORIDA )

COUNTY OF VOLUSIA )

TERRY M. FOSTER appeared before me, and after being duly sworn acknowledged that he executed the foregoing Articles of Incorporation for the purposes expressed in the Articles on this 3<sup>rd</sup> day of May, 1978.

One R. L. Lintz  
Notary Public

Notarial Seal

Notary Public, State of Florida of Long  
My Commission Expires Sept. 19, 1979  
My commission expires Sept. 19, 1979

ARTICLES OF AMENDMENT

TO

ARTICLES OF INCORPORATION

OF

SEAWINDS OF NEW SMYRNA BEACH  
OWNERS ASSOCIATION, INC., a non-  
profit Florida corporation

FILED  
MAR 14 3 34 PM '80  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

1. ARTICLE 3 paragraph 3.2 j of the Articles of Incorporation of  
SEAWINDS OF NEW SMYRNA BEACH OWNERS ASSOCIATION, INC.,  
a non-profit Florida corporation, is amended to read as follows:

ARTICLE 3

3.2 j: To contract for the management of the condominium and to  
delegate to the contractor all powers and duties of the Association except  
those that are specifically required by the Declaration of Condominium  
or Chapter 718 Florida Statutes to have approval of the Board of Directors  
or the membership of the Association.

The foregoing Amendment was adopted by the directors and membership  
of this corporation on the 13 day of March, 1980.

IN WITNESS WHEREOF the undersigned President and Secretary of  
this corporation have executed these Articles of Amendment on this 13  
day of March, 1980.

SEAWINDS OF NEW SMYRNA BEACH  
OWNERS ASSOCIATION, INC.

By Joe F. Unchell  
President

Perry M. Foster  
Secretary

STATE OF

COUNTY OF

Before me personally appeared JOHN F. McMULLAN and TERRY M. FOSTER to me well known and known to me to be the individuals described in and who executed the foregoing instrument as President and Secretary of the above named SEAWINDS OF NEW SMYRNA BEACH OWNERS ASSOCIATION, INC., a non-profit Florida corporation, and severally acknowledged to and before me that they executed such instrument as President and Secretary, respectively, of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 13 day of March, 1980.

*Chas R Gentry*

Notary Public

My Comm. Exp. 12/31/82  
My Comm. No. 12345

My commission expires

**BY LAWS**  
**OF**  
**SEAWINDS OF NEW SMYRNA BEACH OWNERS**  
**ASSOCIATION, INC.**

A corporation not for profit under the laws of the  
State of Florida

1. Identity. These are the Bylaws of SEAWINDS OF NEW SMYRNA BEACH OWNERS ASSOCIATION, INC., called Association in these Bylaws, a corporation not for profit under the laws of the State of Florida. The Articles of Incorporation of the Association were filed in the office of the Secretary of State. The Association has been organized for the purpose of administering a condominium pursuant to Chapter 718, Florida Statutes, called the Condominium Act in these Bylaws, which condominium is identified by the name of SEAWINDS OF NEW SMYRNA BEACH and is located upon the following lands in Volusia County, Florida:

The South 150 feet of the North 550 feet of U. S. Lot 1, Section 6, Township 18 South, Range 35 East, lying East of the road right-of-way of State Road 1A1, of the Public Records of Volusia County, Florida.

Subject to easement in favor of Frank A. Ford, Trustee, for a walk way to the Atlantic Ocean over the Northerly three (3) feet of the captioned real estate, as set forth in instrument dated July 15, 1974, and recorded in Official Record Book 1735, Page 1006, Public Records of Volusia County, Florida.

1.1 The office of the Association shall be at 4875 South Atlantic Avenue, New Smyrna Beach, Florida.

1.2 The fiscal year of the Association shall be the calendar year.

1.3 The seal of the corporation shall bear the name of the corporation, the word "Florida," the words "Corporation not for profit".

2. Members.

2.1 Roster of members. The Association shall maintain a roster of the names and mailing addresses of unit owners, which shall constitute a roster of members. The roster shall be maintained from evidence of ownership furnished to the Association from time to time to substantiate the holding of a membership and from time to time to substantiate the holding of a membership and from changes of mailing addresses furnished from time to time. Each member shall furnish to the Association a certified copy of the record evidence of his title substantiating his membership in the manner required by the Articles of Incorporation and the Declaration of Condominium.

2.2 Annual meeting. The annual members' meeting shall be held on the second day of the week, in the month of November in each year at 9:00 A.M. local time, in the recreation hall of the condominium or at such other place in New Smyrna Beach, Florida, as the President or a majority of

the board of directors shall determine; provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the next day which is not a holiday. The purpose of the meeting shall be to elect directors and to transact any other business authorized to be transacted by the members; provided that if the date for the first annual meeting of members subsequent to relinquishment of control by the developer of the condominium is less than six months after the first election of directors by the membership of the Association, this annual meeting shall not be held, and the directors first elected by the membership of the Association shall serve until the date for the next following annual meeting.

2.3 Special Members' meetings shall be held at such places as provided for annual meetings whenever called by the President or by a majority of the board of directors, and must be called by those officers upon receipt of a written request from a majority of the members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

2.4 Notice of a meeting of members stating the time and place and the objects for which the meeting is called shall be given by the officer calling the meeting. A copy of the notice shall be posted at a conspicuous place on the condominium property and a copy shall be delivered or mailed to each member entitled to attend the meeting except members who waive the notice in writing. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting, delivery or mailing of the notice shall be effected not less than fourteen days nor more than sixty days prior to the date of the meeting. Proof of posting, delivery or mailing of the notice shall be given by the affidavit of the person serving the notice. Notice of a meeting may be waived before or after the meeting.

2.5 A quorum at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership. The acts approved by a majority of the votes cast at a meeting at which a quorum is present shall constitute the acts of the members, except when approval by a greater number of members is required by the Declaration of Condominium, the Articles of Incorporation or these Bylaws.

#### 2.6 Voting

a. In any meeting of members each unit owner shall be entitled to one vote.

b. If a unit is owned by one person his right to vote shall be established by the roster of members. If a unit is owned by more than one person, or is under lease, the person entitled to cast the vote for the unit shall be designated by a certificate signed by all of the record owners of the unit according to the roster of unit owners and filed with the Secretary of the Association. If a unit is owned by a corporation, the person entitled to cast the vote for the unit shall be designated by a certificate signed by the president or vice president and attested by the secretary or assistant secretary of the corporation and filed with the Secretary of the Association. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the unit concerned. A certificate designating the person entitled to cast the vote for a unit may be revoked by any owner of a share in the unit. If a certificate designating the person entitled to cast the vote for a unit is not on file, the vote of the owners shall not be considered in determining whether a quorum is present nor for any other purpose.

2.7 Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote and shall be valid only for the particular meeting designated in the proxy. A proxy must be filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. One person may hold no more than five proxies.

2.8 Adjourned meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the adjourned meeting is given in the manner required for notice of a meeting.

2.9 The order of business at annual members' meetings and as far as practical at other members' meetings, shall be:

- a. Call to order by President
- b. Election of chairman of the meeting
- c. Calling of the roll and certifying of proxies
- d. Proof of notice of meeting or waiver of notice
- e. Reading and disposal of any unapproved minutes
- f. Reports of officers
- g. Reports of committees
- h. Election of inspectors of election
- i. Determination of number of directors
- j. Election of directors
- k. Unfinished business
- l. New business
- m. Adjournment

2.10 Proviso. Provided, however, that until a majority of the directors of the Association are elected by the members other than the Developer of the condominium, the proceedings of all meetings of members of the Association shall have no effect unless approved by the board of directors.

### 3. Directors

3.1 Membership. The affairs of the Association shall be managed by a board of not less than three nor more than five directors, the exact number to be determined at the time of election.

3.2 Election of directors shall be conducted in the following manner:

a. Election of directors shall be held at the annual members' meeting.

b. A nominating committee of five members shall be appointed by the board of directors not less than 30 days prior to the annual members' meeting. The committee shall nominate one person for each director then serving. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

c. The election shall be by ballot, unless dispensed by unanimous consent, and by a plurality of the votes cast; each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

d. Except as to vacancies provided by removal of directors by members, vacancies in the board of directors occurring between annual meetings of members shall be filled by the remaining directors.

e. Any director may be removed by concurrence of two thirds of the votes of the entire membership at a special meeting of the members called for that purpose. The vacancy in the board of directors so created shall be filled by the members of the Association at the same meeting.

f. Provided, however, that until a majority of the directors are elected by the members other than the Developer of the condominium, neither the first directors of the Association nor any directors replacing them nor any directors named by the Developer shall be subject to removal by members other than the Developer. The first directors and directors replacing them may be removed by the Developer.

3.3 The term of each director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

3.4 The organization meeting of a newly-elected board of directors shall be held within ten days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary.

3.5 Regular meetings of the board of directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegraph, and shall be transmitted at least three days prior to the meeting. A notice of regular meetings shall be posted conspicuously 48 hours in advance for the attention of members of the Association.

3.6 Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of one third of the directors. Notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three days prior to the meeting. Notice of a special meeting shall be posted conspicuously 48 hours in advance for the attention of members of the Association except in an emergency.

3.7 Waiver of notice. Any director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the giving of notice.

3.8 A quorum at directors' meetings shall consist of a majority of the entire board of directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the board of directors, except when approval by a greater number of directors is required by the Declaration of Condominium, the Articles of Incorporation or these Bylaws.

3.9 Adjourned meetings. If at any meeting of the board of directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.

3.10 Joinder in meeting by approval of minutes. The joinder of a director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of that director for the purpose of determining a quorum.

3.11 The presiding officer of directors' meetings shall be the chairman of the board if such an officer has been elected; and if none, the President shall preside. In the absence of the presiding officer, the directors present shall designate one of their number to preside.

3.12 The order of business at directors' meetings shall be:

- a. Calling of roll
- b. Proof of due notice of meeting
- c. Reading and disposal of any unapproved minutes
- d. Reports of officers and committees
- e. Election of officers
- f. Unfinished business
- g. New business
- h. Adjournment

3.13 Directors' fees, if any, shall be determined by the members.

4. Powers and duties of the Board of Directors. All of the powers and duties of the Association existing under the Condominium Act, Declaration of Condominium, Articles of Incorporation and these Bylaws shall be exercised exclusively by the board of directors, its agents, contractors or employees, subject only to approval by unit owners when that is specifically required.

5. Officers.

5.1 The executive officers of the Association shall be a President, who shall be a director, a Vice President, who shall be a director, a Treasurer, a Secretary and an Assistant Secretary, all of whom shall be elected annually by the board of directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the directors. A person may hold more than one office except that the President may not also be the Secretary or Assistant Secretary. No person shall sign an instrument nor perform an act in the capacity of more than one office. The board of directors from time to time shall elect such other officers and designate their powers and duties as the board shall find to be required to manage the affairs of the Association.

5.2 The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the members from time to time to assist in the conduct of the affairs of the Association as he in his discretion may determine appropriate.

5.3 The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

5.4 The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the serving of all notices to the members and directors and other notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the President.

5.5 The Assistant Secretary shall exercise the powers and perform the duties of the Secretary in the absence or disability of the Secretary.

5.6 The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices which, together with substantiating papers, shall be made available to the board of directors for examination at reasonable times. He shall submit a treasurer's report to the board of directors at reasonable intervals and shall perform all other duties incident to the office of treasurer.

5.7 The compensation of all officers and employees of the Association shall be fixed by the directors. The provision that directors' fees shall be determined by members shall not preclude the board of directors from employing a director as an employee of the Association nor preclude the contracting with a director for the management of the condominium.

6. Fiscal management. The provisions for fiscal management of the Association set forth in the Declaration of Condominium and Articles of Incorporation shall be supplemented by the following provisions:

6.1 Accounts. The receipts and expenditures of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common expenses:

a. Current expense, which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to capital surplus or to additional improvements. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year.

b. Capital surplus for

(1) Deferred maintenance, which shall include funds for maintenance items that occur less frequently than annually.

(2) Replacements, which shall include funds for repair or replacement required because of damage, depreciation or obsolescence.

(3) Betterments, which shall include the funds to be used for capital expenditures for additional improvements or additional personal property that will be part of the common elements.

c. Operations, which shall include the gross revenue from the use of the common elements. Only the additional direct expense required by the revenue-producing operation will be charged to this account, and any surplus from that operation shall be used to reduce the assessment for current expense in the year following the year in which the surplus is realized. Losses from operations shall be met by special assessments against apartment owners, which assessments may be made in advance in order to provide a working fund.

6.2 Budget. The board of directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray the common expense and to provide and maintain funds for the foregoing accounts according to good accounting practices as follows:

a. Current expense, the amount for which shall not exceed 115% of the budget for this account for the prior year.

b. Deferred maintenance, the amount for which shall not exceed 115% of the budget for this account for the prior year.

c. Replacements, the amount for which shall not exceed 115% of the budget for this account for the prior year.

d. Provided, however, that the amount for each budgeted item may be increased over the foregoing limitations when approved by members entitled to cash not less than 75% of the votes of the entire membership of the Association.

e. Further provided, however, that until the Developer of the condominium has completed all of the contemplated improvements and closed the sales of all units of the condominium, or until developer elects to terminate its control of the condominium, or until December 31, 1980 whichever shall first occur, the Board of Directors may omit from the budget all allowances for contingencies and capital surplus.

f. Copies of a proposed budget and proposed assessments shall be delivered or mailed to each member not less than 30 days prior to the meeting of the board of directors at which the proposed budget will be considered for adoption, together with a notice of that meeting. If the budget is amended subsequently, a copy of the amended budget shall be furnished to each member.

6.3 Assessments. Assessments against the unit owners for their shares of the items of the budget shall be made by the board of directors for the calendar year annually in advance on or before December 20 preceding the year for which the assessments are made. The amount required from each unit owner to meet the annual budget shall be divided into four equal assessments, one of which shall be due on the first day of each calendar quarter of the year for which the assessments are made, or thirty days after the mailing to the unit owners concerned of a statement for the assessment coming due, whichever date shall last occur. If assessments are not made annually as required, quarterly assessments shall be presumed to have been made in the amount of the last prior quarterly assessment and assessments in this amount shall be due on the first day of each calendar quarter until changed by an amended assessment. In the event a quarterly assessment shall be insufficient in the judgment of the board of directors to provide funds for the anticipated current expense for the ensuing quarter and for all of the unpaid operating expenses previously incurred, the board of directors shall amend the budget and shall make amended quarterly assessments for the balance of the year in sufficient amount to meet these expenses for the year, provided, however, that any account of the amended budget that exceeds the limit upon increases for that year shall be subject to the approval of the membership of the Association as previously required in these Bylaws.

6.4 Assessments for charges. Charges by the Association against members for other than common expense shall be payable in advance. Those charges may be collected by assessment in the same manner as common expenses and when circumstances permit, those charges shall be added to the assessments for common expense. Charges for other than common expense may be made only after approval of a member, and may include but shall not be limited to charges for the use of condominium property when authorized by the Declaration of Condominium, maintenance services furnished at the expense of a member and other services furnished for the benefit of a member.

6.5 Assessments for emergencies: Assessments for common expenses of emergencies that cannot be paid from the annual assessments for common expenses shall be due only after 30 days' notice is given to the unit owners concerned and shall be paid in such manner as the board of directors of the Association may require in the notice of assessment.

6.6 The depository of the Association shall be such bank or banks as shall be designated from time to time by the directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from those accounts shall be only by checks signed by such persons as are authorized by the directors.

6.7 An audit of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audit report shall be furnished to each member not later than April 1 of the year following the year for which the audit is made.

6.8 Fidelity bonds shall be required by the board of directors from all persons handling or responsible for Association funds. The amount of those bonds and the sureties shall be determined by the directors. The premiums on the bonds shall be paid by the Association.

7. Parliamentary rules. Roberts' Rules of Order shall govern the conduct of Association meetings when not in conflict with the Declaration of Condominium, Articles of Incorporation or these Bylaws.

8. Amendments. Except as elsewhere provided otherwise, these Bylaws may be amended in the following manner:

8.1 Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

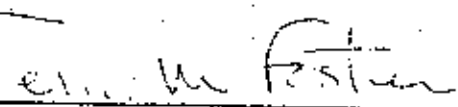
8.2 A resolution adopting a proposed amendment may be proposed by either the board of directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing that approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, the approvals must be either by:

a. not less than 75% of the entire membership of the board of directors and by not less than 75% of the votes of the entire membership of the Association; or

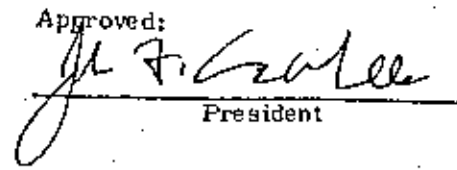
b. by not less than 80% of the votes of the entire membership of the Association; or

c. until a majority of the directors are elected by members other than the Developer of the condominium, only by all of the directors.

The foregoing were adopted as the Bylaws of SEAWINDS OF NEW SMYRNA BEACH OWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, at the first meeting of the board of directors on 1972

  
Secretary

Approved:

  
President

ARTICLES OF AMENDMENT

TO

BYLAWS

OF

SEAWINDS OF NEW SMYRNA BEACH  
OWNERS ASSOCIATION, INC., a non-  
profit Florida corporation

1. Article 3 paragraph 3.2 c. of the Bylaws of SEAWINDS OF  
NEW SMYRNA BEACH OWNERS ASSOCIATION, INC., a non-profit  
Florida corporation, is amended to read as follows:

ARTICLE 3

3.2 e. Any director may be removed by concurrence of a majority  
of the votes of the entire membership at a special meeting of the members  
called for that purpose. The vacancy in the board of directors so created  
shall be filled by the members of the Association at the same meeting.

2. Article 6 paragraph 6.3 of the Bylaws of SEAWINDS OF NEW  
SMYRNA BEACH OWNERS ASSOCIATION, INC., a non-profit Florida  
corporation, is amended to read as follows:

ARTICLE 6

6.3 Assessments. Assessments against the unit owners for their  
shares of the items of the budget shall be made by the board of directors for  
the calendar year annually in advance on or before December 20 preceding  
the year for which the assessments are made. The amount required from  
each unit owner to meet the annual budget shall be divided into twelve (12)  
equal monthly assessments, one of which shall be due on the first day of  
each month of the year for which the assessments are made, or thirty days  
after the mailing to the unit owners concerned of a statement for the assess-  
ment coming due, whichever date shall last occur. If assessments are not  
made annually as required, monthly assessments shall be presumed to have been  
made in the amount of the last prior monthly assessment and assessments in  
this amount shall be due on the first day of each month until changed by an  
amended assessment. In the event a monthly assessment shall be insufficient  
in the judgment of the board of directors to provide funds for the anticipated  
current expense for the ensuing month and for all of the unpaid operating  
expenses previously incurred, the board of directors shall amend the budget  
and shall make amended monthly assessments for the balance of the year  
in sufficient amount to meet these expenses for the year, provided, however,  
that any account of the amended budget that exceeds the limit upon increases  
for that year shall be subject to the approval of the membership of the  
Association as previously required in these Bylaws.

The foregoing amendments were adopted by the directors and members of this corporation on the 13 day of March, 1980.

IN WITNESS WHEREOF the undersigned President and Secretary of this corporation have executed these Articles of Amendment on this 13 day of March, 1980.

SEAWINDS OF NEW SMYRNA BEACH  
OWNERS ASSOCIATION, INC.

By

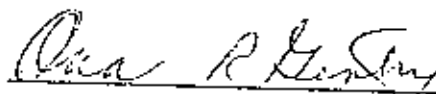
Ja F. Kowalski  
President

Therese Foster  
Secretary

STATE OF  
COUNTY OF

Before me personally appeared JOHN F. McMULLAN and  
TERRY M. FOSTER to me well known and known to me to be the  
individuals described in and who executed the foregoing instrument  
as President and Secretary of the above-named SEAWINDS OF NEW  
SMYRNA BEACH OWNERS ASSOCIATION, INC., a non-profit Florida  
corporation, and severally acknowledged to and before me that they  
executed such instruments as President and Secretary, respectively,  
of said corporation, and that the seal affixed to the foregoing instrument  
is the corporate seal of said corporation and that it was affixed to said  
instrument by due and regular corporate authority, and that said instrument  
is the free act and deed of said corporation.

WITNESS my hand and official seal this 13 day of March, 1930.

  
Notary Public

My commission expires

Every Public Notary of this State is required to file a statement of his commission with the Secretary of State, and the same shall be published in the official gazette.

DECLARATION OF CONDOMINIUM  
OF  
SEAWINDS OF NEW SMYRNA BEACH  
SOUTH ATLANTIC AVENUE  
NEW SMYRNA BEACH, FLORIDA 32069

MADE this 4<sup>th</sup> day of May, 1978, by SEAWINDS  
OF NEW SMYRNA BEACH, INC., a Florida corporation, called Developer,  
for itself, its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. Purpose. The purpose of this Declaration is to submit the lands  
described in this instrument and improvements on those lands to the  
condominium form of ownership and use in the manner provided by Chapter  
718, Florida Statutes, hereafter called The Condominium Act.

1.1 Name and address. The name by which this condominium is  
to be identified is SEAWINDS OF NEW SMYRNA BEACH, a condominium,  
and its address is 4875 South Atlantic Avenue, New Smyrna Beach,  
Florida. It is hereafter called "the condominium."

1.2 The land. The lands owned by the Developer, which by this  
instrument are submitted to the condominium form of ownership, are the  
following described lands lying in Volusia County, Florida:

The South 150 feet of the North 550 feet of U.S. Lot 1,  
Section 6, Township 18 South, Range 35 East, lying  
East of the road right-of-way of State Road A1A,  
of the Public Records of Volusia County, Florida.

1.3 The above described lands in this Declaration are subject

to the easement in favor of Frank A. Ford, Trustee, for a walk-way to the Atlantic Ocean over the Northerly three (3) feet of the captioned real estate, as set forth in instrument dated July 15, 1974, and recorded in Official Record Book 1735, Page 1006, Public Records of Volusia County, Florida.

2. Definitions. The terms used in this Declaration and in its exhibits shall have the meanings stated in the Condominium Act (F.S. 718 Sec.103) and as follows, unless the context otherwise requires:

2.1 Approval or consent. Whenever approval or consent is required of any person or entity, that approval or consent shall not be unreasonably withheld.

2.2 Association means SEA WINDS OF NEW SMYRNA BEACH OWNERS ASSOCIATION, INC., and its successors.

2.3 Bylaws means Bylaws of the Association and of the condominium.

2.4 Ownership Common elements shall include the tangible personal property required for the maintenance and operation of the condominium, and any land and other property acquired by the Association for the condominium even though owned by the Association, as well as the items stated in the Condominium Act.

2.5 Common expenses include:

a. expenses of administration; expenses of insurance, maintenance, operation, repair, replacement and betterment of the common elements, and of the portions of units to be maintained by the Association.

b. expenditures or amounts of assessments by the Association for payment of costs that are the responsibility of a unit owner, including but not limited to costs to repair of damage to a unit in excess of insurance proceeds, and the costs of insurance upon a unit.

c. expenses declared common expenses by provisions of this Declaration or the Bylaws.

d. any valid charge against the condominium property as a whole.

2.6 Condominium means all of the condominium property as a whole when the context so permits, as well as the meaning stated in the Condominium Act.

2.7 Condominium parcel means a unit together with the undivided share in the common elements that is appurtenant to the unit, and when the context permits, the term includes all of the appurtenances to the unit.

2.8 Regulations means regulations respecting the use of the condominium property that have been adopted by the Association from time to time in accordance with its Articles of Incorporation and Bylaws.

2.9 Singular, plural, gender. Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

2.10 Utility services as used in the Condominium Act and as construed with reference to this condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewage disposal.

3. Development Plan. The condominium is described and established as follows:

3.1 Survey. A survey of the land showing the improvements to be constructed on it is attached as EXHIBIT A.

3.2 Plans. The construction of the condominium is not substantially completed. The improvements upon the land are to be constructed substantially, in accordance with the plans and specifications prepared by Ray Bennett, Architect, Winter Park, Florida, and designated as his Job No. SEAWINDS TOWNHOUSES. That upon substantial completion of construction of this condominium the Developer shall cause to be filed in the public records of Volusia County, Florida an amendment to the Declaration of Condominium consisting of a certificate of a surveyor

authorized to practice in the State of Florida that the construction of the improvements is substantially complete so that the material, together with the provisions of the Declaration describing the condominium property is an accurate representation of the location and dimensions of the improvements, and that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.

3.3. Amendment of plans.

a. Alteration of unit plans. The interior plan of a unit may be changed by its owner, and the boundaries between units may be changed by the owners of the units affected, except that no change shall be made in the boundaries of units that would result in a unit having an inside floor area of less than 1,000 square feet. No units may be subdivided. No change shall be made in balconies. No change in the boundaries of units shall encroach upon the boundaries of the common elements. Boundary walls must be sound-proof and must be equal in quality of design and construction to the existing boundary walls. Any changes in the boundaries of units shall be affected in accordance with plans prepared by an architect licensed to practice in this state, which plans shall be first filed with the Association. Any change that is made within a unit or in its boundaries shall also comply with the requirements of the section concerning Maintenance, Alteration and Improvement. The Developer reserves the right to make changes within units during construction of the building as long as those changes do not change the size of the units for which a contract of purchase has been signed unless such change in size is approved by the purchaser affected by the change.

b. Amendment of declaration. A change in the boundaries between units shall be set forth in an amendment of this declaration. Plans of the units concerned showing the units after the change in boundaries and prepared by an architect licensed to practice in this state shall be attached to the amendment as exhibits, together with the certificate of an architect or

engineer required by the Condominium Act. The amendment shall apportion between the units concerned the shares in the common elements appurtenant to those units, the apportionment to be in proportion to the totals of the floor areas of the units and one-half of the balcony and patio and terrace areas of the units before and after the change in boundaries. Such an amendment shall be signed and acknowledged by the owners of the units concerned; and if Developer is not such as Owner, the amendment also shall be approved by the board of directors of the Association and signed and acknowledged by the Association. Such an amendment also shall be signed and acknowledged by all lienors and mortgagees of the units concerned; but if need not be approved or signed by other unit owners, whether or not elsewhere required for an amendment.

3.4 Easements are reserved through the condominium property as may be required for utility services in order to serve the condominium adequately; provided, however, these easements through a unit shall be only according to the plans and specifications for the apartment building, or as the building is constructed, unless approved in writing by the apartment owner. The easements shall include but not be limited to the chases that run vertically through each unit as shown upon the floor plans. A-unit owner shall do nothing within or outside his unit that interferes with or impairs the utility services using the easements.

3.5 Improvements - general description

a. Apartment building. SEAWINDS TOWNHOUSES consist of twelve individual units joined with common walls, consisting of a ground floor and one additional floor, making a total of two floors.

b. Other improvements. The condominium includes landscaping, swimming pool, automobile parking areas, tennis court, waste water treatment plans and board walk and other facilities located substantially as shown upon the plans and which are part of the common elements.

3.6 Unit Boundaries. Each unit, which term as used in this subsection concerning boundaries shall include that part of the building containing the unit that lies within the boundaries of the unit, which boundaries are as follows:

a. Upper, Middle and Lower Boundaries. The upper, middle and lower boundaries of a unit shall be the following boundaries extended to an intersection with the perimetrical boundaries.

(1) Upper boundaries. the plane of the undecorated finished ceiling. In a unit containing a room in which the ceiling is raised above the level of the ceiling in the rest of the unit, the ceiling shall include the vertical surface connecting the raised ceiling with the ceiling of the remaining portion of the unit, and the upper boundary shall include the plane of the undecorated finished vertical surface that joins the planes of the undecorated finished horizontal portions of the ceiling.

(2) Middle boundaries - the plane of the undecorated second floor slab. In a unit containing a room in which the floor is raised above the level of the floor in the rest of the unit, the floor shall include the vertical surface connecting the raised floor with the floor of the remaining portion of the unit, and the middle boundary shall include the plane of the undecorated finished vertical surface that joins the planes of the undecorated finished horizontal portions of the floor.

(3) Lower boundaries - the plane of the undecorated first floor slab. In a unit containing a room in which the floor is raised above the level of the floor in the rest of the unit, the floor shall include the vertical surface connecting the raised floor with the floor of the remaining portion of the unit, and the lower boundary shall include the plane of the undecorated finished vertical surface that joins the planes of the undecorated finished horizontal portions of the floor.

b. Perimetrical boundaries. The perimetrical boundaries of the unit shall be the vertical planes of the undecorated finished interior of the walls bounding the unit extended to intersections with each other and with the upper, middle and lower boundaries with the following:

vertical planes of the undecorated finished interior of bounding walls do not intersect with each other on the undecorated interior surfaces of the bounding walls or within an intervening partition, the vertical planes of the undecorated finished interior surfaces of bounding walls shall be extended to intersect with the plane of the center line of the intervening partition and that plane shall be one of the perimetrical boundaries of the unit.

3.7 Common elements. The common elements include the land and all other parts of the condominium not within the units and include but are not limited to the following items as to which the Association shall have the powers indicated.

a. Automobile parking areas. In addition to the automobile parking spaces provided for each unit, three additional automobile parking spaces shall be a part of the common elements but shall not be assigned to any unit. The Association shall have authority to make regulations as to the use of these units. *SPACE*

b. Pool and Recreation Areas. The pool and recreation areas as shown on Exhibit A shall be used for recreational purposes. The Association shall have authority to make reasonable regulations for that use, including authority to make reservations of portions thereof for the exclusive use of individual unit owners and their guests from time to time and to make reasonable charges for that exclusive use.

4. The Units. The units of the condominium are apartments and are described more particularly and the rights and obligations of their owners established as follows:

4.1 Typical unit plans. There are three typical unit floor plans which are designated by the capital letters A, B and C. These apartments are described generally below and by sketches attached as the exhibits indicated in the following schedule:

| <u>Apartment</u>      | <u>Containing</u>                                                                                                                                                                      | <u>Exhibit</u> |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <u>Floor Plan "A"</u> |                                                                                                                                                                                        |                |
| B                     | 3 bedrooms, 2 baths, dining area, great room, kitchen, garage and storage<br>1710 square feet of finished living space<br>483 square feet garage<br>578 square feet unfinished storage | B-1            |
| J                     | " " " " " " "                                                                                                                                                                          | B-1            |
| K                     | " " " " " " "                                                                                                                                                                          | B-1            |
| L                     | " " " " " " "                                                                                                                                                                          | B-1            |

|                       |                                                                                                                                                                                        |     |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <u>Floor Plan "B"</u> |                                                                                                                                                                                        |     |
| A                     | 3 bedrooms, 2 baths, dining area, great room, kitchen, garage and storage<br>1710 square feet of finished living space<br>483 square feet garage<br>578 square feet unfinished storage | B-1 |

|                       |                                                                                                                                                                        |     |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| <u>Floor Plan "C"</u> |                                                                                                                                                                        |     |
| C                     | 2 bedrooms, 2 baths, great room, kitchen, garage and storage<br>1458 square feet finished living space<br>420 square feet garage<br>434 square feet unfinished storage | B-1 |
| D                     | " " " " " " "                                                                                                                                                          | B-1 |
| E                     | " " " " " " "                                                                                                                                                          | B-1 |
| F                     | " " " " " " "                                                                                                                                                          | B-1 |
| G                     | " " " " " " "                                                                                                                                                          | B-1 |
| H                     | " " " " " " "                                                                                                                                                          | B-1 |
| I                     | " " " " " " "                                                                                                                                                          | B-1 |

4.2 Unit numbers.

|          |          |
|----------|----------|
| 4875 - A | 4875- K  |
| 4875 - B | 4875 - L |
| 4875 - C |          |
| 4875 - D |          |
| 4875 - E |          |
| 4875 - F |          |
| 4875 - G |          |
| 4875 - H |          |
| 4875 - I |          |
| 4875 - J |          |

4.3 Appurtenances to units. The owner of each unit shall own a share and certain interests in the condominium property, which share and interests are appurtenant to his unit, including but not limited to the following items that are appurtenant to the several units as indicated:

a. Ownership of common elements and common surplus. The undivided share in the land and other common elements and in the common surplus that are appurtenant to each apartment is as follows:

An undivided one-twelfth (1/12th) interest in the common elements which fractional undivided interest shall not be changed. Said undivided interest is to be conveyed or encumbered with respective unit to which it appertains and shall not be separated or separately conveyed or encumbered; and each such undivided interest in the common elements shall be deemed to be conveyed or encumbered with the respective unit to which it appertains even though the instrument of conveyance may refer only to the unit by its proper designation with reference to such undivided fractional interest in the common elements. Any attempt to separate the ownership interest in a unit from the ownership interest in the common elements pertinent to that unit shall be null and void.

b. Use of common elements. Use of the common elements in common with other unit owners in the manner elsewhere described.

c. Association membership. The membership of each unit owner in the Association and the interest of each unit owner in the funds and assets held by the Association.

4.5 Liability for common expenses. Each unit owner shall be liable for a proportionate part of the common expenses, that being based on the size and location of the unit and set forth in the operating budget.

5. Maintenance, alteration and improvement. Responsibility for the maintenance of the condominium property, and restrictions upon its alteration and improvement, shall be as follows:

5.1 Units.

a. By the Association. The Association shall maintain, repair and replace at the Association's expense:

(1) All portions of a unit, except interior surfaces, contributing to the support of the apartment building, which portions shall include but not be limited to load-bearing columns and load-bearing walls.

(2) Balconies, except the painting of floors and inside of parapets;

(3) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portions of a unit maintained by the Association and all such facilities contained within a unit that service part or parts of the condominium other than the unit within which contained; and

(4) All incidental damage caused to a unit by this work shall be repaired promptly at the expense of the Association.

(5) provided that the Association shall have authority to require unit owners at their expense to maintain, repair and replace awnings, screen and glass for windows and glass doors within their respective units except in the case of damage for which insurance proceeds are paid under policies purchased by the Association.

b. By the unit owner. The responsibility of the unit owner shall be as follows:

(1) To maintain, repair and replace at his expense all portions of his unit except the portions to be maintained, repaired and replaced by the Association. This shall be done without disturbing the rights of other unit owners.

(2) The portions of a unit to be maintained, repaired and replaced by the unit owner at his expense shall include but not be limited to the following items: air handling equipment for space cooling and heating; service equipment, such as dishwasher, laundry, refrigerator, oven and stove, whether or not these items are built-in equipment, interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab, and inside paint and other inside wall finishes. Mechanical equipment and the installation of that equipment shall be such that its operation will not cause annoyance to the occupants of other units.

(3) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building. Balconies and porches that are not closed against the weather shall be included in this restriction.

(4) To keep all floors in his unit, except bathrooms, kitchens and balconies, covered with wall-to-wall carpeting or with other floor covering that will not transmit sound.

(5) To report promptly to the Association any defect or need for repairs for which the Association is responsible.

c. Alteration and Improvement. Alteration and Improvement.

Except as elsewhere provided, neither a unit owner nor the Association shall make any alteration in the portions of a unit that are to be maintained by the Association, or remove any portion of them, or make any additions to them, or do anything that would jeopardize the safety or soundness of the apartment building, or impair any easement, without first obtaining approval in writing of owners of all units in which the work is to be done and the approval of the board of directors of the Association. If the alteration or improvement will change the appearance of any portion of the exterior of the apartment building, the change in appearance shall be approved also by the owners of 75% of the common elements at a meeting of unit owners called for that purpose. A copy of plans for all the work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of the work.

5.2 Common Elements.

a. By the Association. The maintenance and operation of the common elements shall be the responsibility of the Association and the cost shall be a common expense. The Association also shall maintain all areas leased to it for recreational or other purposes whether they are condominium units or are contiguous to the condominium property or not, and whether the Association retains the lease in its own name or there are subleases of undivided shares to the unit owners in the condominium.

b. Alteration and Improvement. After the completion of the improvements included in the common elements contemplated by this Declaration, there shall be no alteration nor further improvement of the common elements or acquisition of additional common elements without prior approval in writing by the owners of not less than 75% of the common elements, except as provided by the Bylaws. Any such alteration or improvement shall not interfere with the rights

of any unit owners without their consent. The cost of the work or acquisition shall not be assessed against a bank, life insurance company or savings and loan association that acquires its title as the result of owning a mortgage upon the unit owned, unless that owner shall approve the alteration or improvement or acquisition, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. The share of any cost not so assessed shall be assessed to the other unit owners in the shares that their shares in the common elements bear to each other. There shall be no change in the shares and rights of a unit owner in the common elements nor in his share of common expenses, whether or not the unit owner contributes to the cost of the alteration, improvement or acquisition.

c. Submission of land to condominium. Land acquired by the Association may be added to the land submitted to condominium. This may be done by an amendment of this Declaration that includes the description of the acquired land, submits that land to condominium under the terms of this Declaration and states that the amendment conveys the land by the Association to the unit owners but without naming them. The amendment shall be executed by the Association and adopted by the unit owners in the manner elsewhere required for an amendment to the Declaration. Such an amendment, when recorded in the Public Records of Volusia County, Florida, shall divest the Association of title to the land and shall vest the title in the unit owners without further conveyance in the same undivided shares as the undivided shares in the common elements appurtenant to the units owned by them.

d. Disposition of land. Any land acquired by the Association that is not submitted to condominium by amendment of this Declaration may be sold or mortgaged or otherwise disposed of by the Association after approval in writing by the owners of not less than 75% of the common elements. This approval shall be evidenced by a certificate stating that the approval was duly

given, which certificate shall be executed by the officers of the Association with the formalities of a deed and delivered to a purchaser or mortgagee of the land.

e. Disposition of personal property. Any personal property acquired by the Association may be sold or mortgaged or otherwise disposed of by the Association.

6. Assessments. The making and collection of assessments against unit owners for common expenses shall be pursuant to the Bylaws and subject to the following provisions:

6.1 Share of common expense. Each unit owner shall be liable for a proportionate part of the common expenses which are based on size and location as set forth in the Budget and shall share in the common surplus.

6.2 Interest; application of payments. The portions of assessments and installments on assessments that are not paid when due shall bear interest at the rate of ten per cent per annum from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due.

6.3 Lien for assessments. The lien for unpaid assessments shall secure reasonable attorneys' fees, including but not limited to fees for appellate court representation, incurred by the Association incident to the collection of an assessment or enforcement of the lien.

6.4 Rental pending foreclosure. In any foreclosure of a lien for assessments, the owner of the unit subject to the lien shall be required to pay a reasonable rental for the unit, and the Association shall be entitled to the appointment of a receiver to collect the rent.

7. Association. The operation of the condominium shall be by SEA WINDS OF NEW SMYRNA BEACH, OWNERS ASSOCIATION, INC., a corporation not for profit under the laws of Florida which shall fulfill its functions pursuant to the following provisions:

7.1. Articles of Incorporation. The provisions of the Articles of Incorporation of the Association, a copy of which is attached as EXHIBIT E.

7.2 The Bylaws of the Association shall be the bylaws of the condominium, a copy of which is attached as EXHIBIT F.

7.3 Limitation upon liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

7.4 Roster of Unit Owners and Mortgagees.

a. Owners of units. The Association shall maintain a roster of names and mailing addresses of unit owners. The roster shall be maintained from evidence of ownership furnished to the Association from time to time and from changes of mailing addresses furnished from time to time. Each unit owner shall furnish to the Association a certified copy of the record evidence of his title, which evidence shall entitle the unit owner to be included in the roster if his ownership has been approved by the Association in the manner elsewhere required.

b. Mortgagees. The Association shall maintain a roster that shall contain the name and address of each owner and holder of a mortgage upon a unit in the condominium of which notice is given to the Association. This notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee, which term when used in this declaration shall include

any owner and holder of a mortgage. The mortgagee shall be stricken from the roster upon receipt by the Association of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of the removal shall be given to the mortgagee unless the removal is requested by the mortgagee.

7.5 Restraint upon assignment of shares in assets. The share of a unit owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

7.6 Approval or disapproval of matters. Whenever the decision of a unit owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote of that owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

8. Insurance The insurance other than title insurance that shall be carried upon the condominium property and the property of the unit owners shall be governed by the following provisions:

8.1 Purchase; named insured; custody and payment of policies.

a. Purchase. All insurance policies upon the condominium property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

b. Approval. Each insurance policy and the agency and company issuing the policy shall be subject to approval by the bank, savings and loan association or insurance company that, according to the roster of mortgagees at the time for approval, is the owner and holder of the oldest unsatisfied mortgage held by such an institution upon a unit covered by the policy. The approval may be obtained by directing to the mortgagee having the right of approval a request in writing for approval or disapproval within ten days after the receipt of the

request; and if a response from the mortgagee is not received within that ten day period, the request shall be deemed to be approved. An approval shall not be unreasonably withheld or denied.

c. Named insured. The named insured shall be the Association individually and as agent for the owners of units covered by the policy without naming them, and shall include mortgagees listed in the roster of mortgagees who hold mortgages upon units covered by the policy whether or not the mortgagees are named. Unit owners may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense.

d. Custody of policies and payment of proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the insurance trustee designated by the board of directors of the Association, and all policies and endorsements on them shall be deposited with the insurance trustee.

e. Copies to mortgagees. One copy of each insurance policy and of all endorsements on it shall be furnished by the Association to each mortgagee included in the mortgagee roster who holds mortgages upon units covered by the policy. The copies shall be furnished not less than ten days prior to the beginning of the term of the policy or not less than ten days prior to the expiration of each preceding policy that is being renewed or replaced, whichever date shall first occur.

## 8.2 Coverage.

a. Casualty. All buildings and improvements upon the land shall be insured in such amounts that the insured will not be a co-insurer except under deductible clauses required to obtain coverage at a reasonable cost. The coverage shall exclude foundation and excavation costs, that part of the value of each unit occasioned by special improvement not common to units otherwise

comparable in construction and finish, and all increase in value of units occasioned by alterations, betterments and further improvement. All personal property included in the common elements shall be insured. Values of insured property shall be determined annually by the board of directors of the Association. Insurance coverage shall afford protection against:

(1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and

(2) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to insurance covering flooding, vandalism and malicious mischief. The bailee liability, if any, of the Association to unit owners shall be insured.

The policies shall state whether the following items are included within the coverage in order that unit owners may insure themselves if the items are not insured by the Association: air handling equipment for space cooling and heating; service equipment, such as dishwasher, laundry, refrigerator, oven, stove, water heater, whether or not those items are built-in equipment; interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab; and inside paint and other inside wall finishes.

When appropriate and possible, the policies shall waive the insurer's right to

(a) subrogation against the Association and against the unit owners individually and as a group;

(b) the pro rata clause that reserves to the insurer the right to pay only a fraction of any loss if other insurance carriers have issued coverage upon the same risk; and

(c) avoid liability for a loss that is caused by an act of the board of directors of the Association, or by a member of the board of directors of the Association or by one or more unit owners.

b. Public liability in such amounts and with such coverage as shall be required by the board of directors of the Association, including but not limited to hired automobile and nonowned automobile coverages, and with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

c. Workmen's compensation policy to meet the requirements of law.

d. Such other insurance as the board of directors of the Association shall determine from time to time to be desirable.

8.3 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by use for other than a residence, or misuse, occupancy or abandonment of a unit or its appurtenances or of the common elements by a unit owner shall be assessed against and paid by that owner. Not less than ten days prior to the date when a premium is due, evidence of the payment shall be furnished by the Association to each mortgagee listed in the roster of mortgagees.

8.4 Insurance Trustee; shares of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to such bank in Florida with trust powers as may be designated as insurance trustee by the board of directors of the Association, which trustee is referred to in this instrument as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive and hold the insurance proceeds and other funds that are paid to it in trust for the purposes elsewhere stated in this instrument

and for the benefit of the unit owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

a. Unit owners - an undivided share for each unit owner, that share being the same as the undivided share in the common elements appurtenant to his unit.

b. Mortgagees. In the event a mortgagee endorsement of an insurance policy has been issued as to a unit and this is deposited with the Insurance Trustee, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of proceeds made to the unit owner and mortgagee.

8.5 Distribution of proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the manner hereafter provided in the section entitled "Reconstruction or Repair after Casualty."

8.6 Association as agent. The Association is irrevocably appointed agent for each unit owner and for each owner of a mortgage or other lien upon 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 Association and to execute and deliver releases upon the payment of claims.

8.7 Benefit of mortgagee. Certain provisions in this section entitled "Insurance" are for the benefit of mortgagees of condominium parcels. All of these provisions are covenants for the benefit of any mortgagee of a unit and may be enforced by that mortgagee.

9. Reconstruction and repair after casualty.

9.1 Determination whether to reconstruct and repair. Whether or not condominium property damaged by casualty shall be reconstructed and repaired shall be determined in the following manner:

a. Lesser damage. If units to which 50% of the common elements are appurtenant are found by the board of directors of the Association to be tenantable after the casualty, the damaged property shall be reconstructed and repaired.

b. Major damage. If units to which more than 50% of the common elements are appurtenant are found by the board of directors of the Association to be not tenantable after the casualty, whether the damaged property will be reconstructed and repaired or the condominium terminated shall be determined in the following manner:

(1) Immediately after the determination of the amount of insurance proceeds, the Association shall give notice to all unit owners of the casualty, the extent of the damage, the estimated cost to rebuild and repair, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction and repair over the amount of insurance proceeds.

(2) The notice shall call a meeting of unit owners to be held within 30 days from the mailing of the notice.

(3) If the reconstruction and repair is approved at the meeting by the owners of 75% of the common elements, the damaged property will be reconstructed and repaired; but if not so approved, the condominium shall be terminated without agreement as elsewhere provided.

(4) The approval of a unit owner may be expressed by vote or in writing filed with the Association at or prior to the meeting.

(5) The expense of this determination shall be assessed against all unit owners as a common expense.

c. Certificate. The Insurance Trustee may rely upon a certificate of the Association made by its present and secretary to determine whether or not the damaged property is to be reconstructed and repaired.

9.2 Report of damage. If any part of the condominium property shall be damaged and insurance proceeds or other funds are paid to the Insurance Trustee on account of the damage, a report of the damage shall be submitted by the Association to the Insurance Trustee. The report shall include the following information:

- a. Date and cause of damage.
- b. Whether the damaged property will be reconstructed and repaired or the condominium terminated.

If the damaged property will be reconstructed and repaired, the report shall include the following information:

- c. Schedule of damage for which the Association has responsibility for reconstruction and repair and the estimated costs of reconstruction and repair.
- d. Whether damaged property for which the Association has responsibility for reconstruction and repair includes structural parts of a building.
- e. Schedule of damage for which unit owners have the responsibility for reconstruction and repair and the estimated costs of each owner for reconstruction and repair.
- f. The Insurance Trustee shall approve the manner of determining the estimated costs of reconstruction and repair and the finding as to whether the damaged property includes structural parts of a building, or the report of damage shall be substantiated by an attached report of an architect qualified to practice in this state.

9.3 Responsibility for reconstruction and repair. The responsibility for reconstruction and repair after casualty shall be the same as for maintenance and repair of the condominium property as provided in the section entitled

"Maintenance, alteration and improvement."

9.4 Plans and specifications. Any reconstruction and repair must be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached as exhibits; or if not, then according to plans and specifications approved by the board of directors of the Association, and if the damaged property is the apartment building, by the owners of not less than 75% of the common elements, including the owners of all units the plans for which are to be altered.

9.5 Assessments; determination of sufficiency of funds.

a. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair for which the Association is responsible, or if at any time during that work or upon completion of the work the funds available for the payment of the costs are insufficient, assessments shall be made by the Association against all unit owners in sufficient amounts to provide funds for the payment of those costs. The assessments shall be made as for a common expense, except that the cost of construction, reconstruction and repair occasioned by special improvement made at the request of the owner and not common to other units shall be assessed to the owner of the unit.

b. Determination of sufficiency of funds. If the estimated costs of reconstruction and repair for which the Association is responsible do not exceed \$10,000, the sufficiency of funds to pay the costs shall be determined by the board of directors of the Association and the sums paid upon the assessments shall be held by the Association. If the estimated costs exceed \$10,000, the sufficiency of funds to pay the costs shall be determined by an architect qualified to practice in Florida and employed by the Association to supervise the work, and the sums paid upon the assessments shall be deposited by the Association with the Insurance Trustee.

9.6 Disbursement of funds. The funds held by the Association or by the Insurance Trustee after a casualty, which will consist of proceeds of insurance and the sums collected from assessments against unit owners on account of the casualty, shall be disbursed in the following manner and order:

a. Expense of the trust. All expenses of the Insurance Trustee shall be first paid or provision made for payment.

b. Termination of the condominium. If the condominium is terminated, either by agreement after lesser damage or by failure to the unit owners to approve reconstruction and repair after major damage, the remaining funds shall be deemed to be condominium property and shall be owned by the unit owners as tenants in common in the undivided shares in which they own the common elements prior to the termination. The balance of the funds shall be distributed to the beneficial owners upon demand of the Association in the amounts certified by the Association, remittances to unit owners and their mortgagees being made payable jointly to them.

c. Reconstruction and repair of damage. If the damaged property is reconstructed and repaired, the funds shall be disbursed in the following manner:

(1) By Association - damages of \$10,000 or less. If the estimated costs of reconstruction and repair that is the responsibility of the Association do not exceed \$10,000, the funds shall be disbursed in payment of these costs upon the order of the Association; provided, however, the funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of damage of more than \$10,000 if the damaged property includes structural parts of a building, or if requested by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the funds.

(2) By Association - damage of more than \$10,000. If the estimated costs of reconstruction and repair that is the responsibility of the Association exceed \$10,000, the funds shall be disbursed in payment of these

costs in the manner required by the board of directors of the Association; provided, however, that an architect qualified to practice in Florida and employed by the Association to supervise the work shall approve all disbursements as being due and properly payable.

(3) By unit owners. If there is a balance of insurance proceeds, after payment of costs of reconstruction and repair that is the responsibility of the Association, this balance shall be distributed to owners of damaged units who have responsibility for reconstruction and repair of their units. The distribution shall be in the shares that the estimated cost of reconstruction and repair of this damage in each damaged unit bears to the total of these costs in all damaged units; provided, however, that no unit owner shall be paid an amount in excess of the estimated costs for his unit. If there is a mortgage upon a unit, the distribution shall be paid to the unit owner and the mortgagee jointly and they may use the proceeds as they may determine.

(4) Surplus. It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance remaining after payment of the costs for which the funds are collected, the balance shall be distributed to the beneficial owners of the funds, remittances to unit owners and their mortgagees being made payable jointly to them; provided, however, that the part of a distribution to a unit owner that is not in excess of assessments paid by that owner into the funds shall not be made payable to any mortgagee.

d. Reliance upon certificates. Notwithstanding the provisions of this declaration, the Insurance Trustee shall not be required to make a determination as to the existence of certain facts upon which the distribution of funds is conditioned. Instead, the Insurance Trustee may rely upon the certificate of the Association made by its president and secretary stating:

(1) Whether the damaged property will be reconstructed and repaired or the condominium terminated.

(2) Whether or not payments upon assessments against unit owners shall be deposited with the Insurance Trustee.

(3) That sums to be paid are due and properly payable, the name of the payee and the amount to be paid.

(4) The names of unit owners to receive distribution of funds and the amounts to be distributed to them; provided, however, that when a mortgagee is required by this instrument to be named as payee of a distribution to a unit owner, the Insurance Trustee also shall name the mortgagee as payee of any distribution of insurance proceeds to a unit owner.

e. Proviso. Provided, however, that under the following circumstances the approval of the architect elsewhere required shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair:

(1) When the report of damage shows that the damaged property includes structural parts of a building.

(2) When the report of damage shows that the estimated costs of reconstruction and repair that is the responsibility of the Association exceed \$10,000.

(3) If required by the Association or by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the funds to be disbursed.

9.7 Benefit of mortgagees. Certain provisions in this section entitled "Reconstruction or Repair after Casualty" are for the benefit of mortgagees of condominium parcels. All of these provisions are covenants for the benefit of any mortgagee of a unit and may be enforced by the mortgagee.

9.8 Adjustment of amount. The amount of \$10,000 stated in this section entitled "Reconstruction or Repair after Casualty" shall be adjusted on July 1, (1980) so that the adjusted amount will have the same purchasing power

in the months of January, February and March (1980) as the amount applicable in the preceding year has in the months of January, February and March (1978); and this adjusted amount shall be further adjusted on July 1, (1990) and on July 1 of each 10th year thereafter so that the adjusted amount will have the same purchasing power in the months of January, February and March in the year of the adjustment as the amount applicable in the preceding year has in the months of January, February and March of the latest prior year the number of which is divisible by 10. The purchasing power of the amount shall be measured by the average of the index numbers of retail commodity prices for the months indicated. The adjusted amount shall be computed by multiplying the amount applicable in the preceding year by the designated average of index numbers for the year of adjustment, and by dividing the result by the designated average of index numbers for the latest prior year the number of which is divisible by 10, except that in the adjustment on July 1, (1980) the divisor shall be the designated average of index numbers for (1978). The index numbers to be employed are the index numbers of retail commodity prices designated "CONSUMER PRICE INDEX - U. S. CITY AVERAGE, ALL ITEMS" prepared by the Bureau of Labor Statistics of the U. S. Department of Labor, provided that the index in the controlling year and the index in the year of adjustment shall be constructed upon the same base. Any publication by either the U.S. Department of Labor or the U.S. Department of Commerce in which those index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving the adjustment without further proof of authenticity. In the event the U.S. Department of Labor ceases to prepare and to publish those retail commodity index numbers, the adjustment of amounts thereafter shall be according to the most closely comparable commodity index designated by the U.S. Department of Labor; and if it is not designated by that department, then the most closely comparable index as determined by the board of directors of the Association.

10. Condemnation.

10.1 Deposit of awards with Insurance Trustee. The taking of

condominium property by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Insurance Trustee; and in the event of failure so to do, in the discretion of the board of directors of the Association a special assessment shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that owner.

10.2 Determination whether to continue condominium. Whether the condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty. For this purpose, the taking by condemnation shall be deemed to be a casualty.

10.3 Disbursements of funds. If the condominium is terminated after condemnation, the proceeds of the awards and special assessments will be deemed to be condominium property and shall be owned and distributed in the manner provided for insurance proceeds if the condominium is terminated after a casualty. If the condominium is not terminated after condemnation, the size of the condominium will be reduced, the owners of condemned units will be made whole and the property damages by the taking will be made useable in the manner provided below. The proceeds of the awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee after a casualty.

10.4 Unit reduced but tenantable. If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the award for the taking of a portion of the unit shall be used for the following purposes in the order stated and the following changes shall be effected in the condominium:

a. Restoration of unit. The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be assessed against the owner of the unit.

b. Distribution of surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee.

c. Adjustment of shares in common elements. If the floor area of the unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

10.5 Unit made untenable. If the taking is of the entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated and the following changes shall be effected in the condominium:

a. Payment of award. The market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

b. Addition to common elements. The remaining portion of the unit, if any, shall become a part of the common elements and shall be placed in condition for use by all of the unit owners in the manner approved by the board of directors of the Association; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required for further improvement of the common elements.

c. Adjustment of shares in common elements. The shares in the common elements appurtenant to the units that continue as part of the

condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these owners as they exist prior to the adjustment.

d. Assessments. If the amount of the award for the taking is not sufficient to pay the market value of the condemned unit to the owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by assessments against all of the unit owners who will continue as owners of units after the changes in the condominium effected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes effected by the taking.

e. Arbitration. If the market value of a unit prior to the taking cannot be determined by agreement between the unit owner and mortgagees of the unit and the Association within 30 days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all unit owners in proportion to the shares of the owners in the common elements as they exist prior to the changes effected by the taking.

10.6 Taking of common elements. Awards for the taking of common elements shall be used to make the remaining portion of the common elements useable in the manner approved by the board of directors of the Association, provided, that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for further improvement of the common elements. The balance of the awards for the taking of common elements, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If there is a mortgage of a unit, the distribution shall be paid jointly to the owner and mortgagees of the unit.

10.7 Amendment of declaration. The changes in units, in the common elements and in the ownership of the common elements that are effected by condemnation shall be evidenced by an amendment of the declaration of condominium that need be approved only by a majority of all directors of the Association.

11. Use restrictions. The use of the condominium property shall be in accordance with the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land.

11.1 Units. Each of the units shall be occupied only as a single family private dwelling by the owner and members of his family, and others deemed as approved by the Association, and as a residence and for no other purpose.

11.2 Common elements. The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the units by their occupants.

11.3 Pets. No pets shall be maintained or kept in any of the units other than cats, dogs not exceeding twenty-five (25) pounds when fully

grown, goldfish, tropical fish and the like, and such birds as canaries, parakeets and the like, provided that they are not kept, bred or maintained for any commercial use, except as may be specifically provided for and authorized by the rules and regulations of the Association as they may be from time to time adopted or amended, or pursuant to the written consent of the Board of Directors of the Association, or of the Developer, provided, such written consent when once given and relied upon in connection with the purchase and acquisition of a condominium apartment unit may not thereafter be revoked or terminated without the consent of the unit owner.

11.3. Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No unit owner shall permit any use of his unit or make any use of the common elements that will increase the cost of insurance upon the condominium property above that required when the unit is used for the approved purposes.

11.4. Lawful use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

11.5. Leasing of Units. After approval by the Association as elsewhere required, entire units may be rented provided the occupancy is only by the lessee, his family and guests, provided that no unit shall be leased to an unmarried person under the age of twenty five (25) years except with the express written consent of the Board of Directors of the Association

or of the Developer, provided, such written consent when once given and relied upon in connection with the purchase and acquisition of a condominium apartment unit may not thereafter be revoked or terminated with respect to the unit owner but shall not inure to the benefit of any subsequent grantee or lessee of the unit owner. No rooms may be rented and no transient tenants shall be accommodated in any unit, nor shall any lease of a unit release or discharge the owner thereof of compliance with any of his obligations and duties as a unit owner. All of the provisions of this Declaration, Articles of Incorporation, the By-Laws and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a unit as a tenant to the same extent as against a unit owner, and a covenant upon the part of each such tenant to abide by the Rules and Regulations of the Association, and the terms and provisions of the Declaration of Condominium, Articles of Incorporation and By-Laws, and designating the Association as the unit owner's agent for the purpose of and with the authority to terminate any such lease agreement in the event of violations by the tenant of such lease agreement in the event of violations by the tenant of such covenant, shall be an essential element of any such lease or tenancy agreement, whether oral or written, and whether specifically expressed in such agreement or not.

11.6 Signs. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the common elements, limited common elements or units, excepting that the right is specifically reserved in the Developer to place "For Sale" or "For Rent" signs in connection with any unsold or unoccupied unit it may from time to time own, and the same right is reserved to any institutional first mortgagee which may become the owner of a unit, and to the Association as to any unit which it may own.

11.7 Parking spaces. No truck or other commercial vehicle, boats, house trailers, boat trailers, mobile homes, campers and trailer of every other description shall be parked in any parking space except with the written consent of the Board of Directors. This prohibition of parking shall

not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services as may be necessary to effectuate deliveries to the condominium, the Association or Unit Owners and residents.

11.8. Regulations. Reasonable regulations concerning the use of condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. Copies of such regulations and amendments shall be furnished by the Association to app apartment unit owners and residents of the Condominium upon request.

11.9. Clothes drying. All outdoor drying of clothes by line, rack or otherwise shall be prohibited.

11.10. Transfer of Association Control. Transfer of Association control shall be as provided for under the provisions of Chapter 718.301 (1) Florida Statutes 1976.

12. Maintenance of community interests. In order to maintain a community of congenial residents who are financially responsible and thus

protect the value of the units, the transfer of units by any owner other than the Developer shall be subject to the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land, which provisions each unit owner covenants to observe:

12.1 Transfers subject to approval.

a. Sale. No unit owner or lessee of a unit may dispose of a unit or any interest in a unit by sale without approval of the Association except to the owner of another unit.

b. Lease. No unit owner or lessee of a unit may dispose of a unit or any interest in a unit by lease without approval of the Association except to the owner of another unit.

c. Gift. If any unit owner shall acquire his title by gift, the continuance of his ownership of his unit shall be subject to the approval of the Association.

d. Devise or inheritance. If any unit owner shall acquire his title by devise or inheritance, the continuance of his ownership of his unit shall be subject to the approval of the Association.

e. Other transfers. 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 shall be subject to the approval of the Association.

12.2. Approval by Association. The approval of the Association that is required for the transfer of ownership of units shall be obtained in the following manner:

a. Notice to Association

(1) Sale. A unit owner intending to make a bona fide sale of a unit or any interest in it shall give to the Association notice of that intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association

may reasonably require. The notice at the unit owner's option may include a demand by the unit owner that the Association furnish a purchaser of the unit if the proposed purchaser is not approved; and if that demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.

(2) Lease. A unit owner intending to make a bona fide lease of a unit or any interest in it shall give to the Association notice of that intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require and an executed copy of the proposed lease.

(3) Gift ; devise or inheritance; other transfers. A unit owner intending to make a gift of a unit or any interest in a unit, and a unit owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously approved by the Association, shall give to the Association notice of the proposed gift or of the acquiring of title, together with such information concerning the transferee as the Association may reasonably require, and a certified copy of the instrument evidencing a transferee's title.

(4) Failure to give notice. If the above required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a unit, the Association at its election and without notice may approve or disapprove the transaction of ownership. If the Association disapproves the transaction of ownership, the Association shall proceed as if it had received the required notice on the date of that disapproval.

(5) Costs. A unit owner who is required to give notice to the Association of a transfer of ownership shall pay a reasonable fee to the Association in an amount determined by the regulations, but not to exceed \$50.00

to cover the costs incident to the determination by the Association. The fee shall be paid with the giving of the notice, and the notice shall not be complete unless the fee is paid; and if the notice is not given, the fee shall be assessed against the party owning the unit at the time of assessment.

b. Certificate of approval.

(1) Sale. If the proposed transaction is a sale, then within 30 days after receipt of the notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association in recordable form. The certificate shall be recorded in the public records of Volusia County, Florida, at the expense of the purchaser.

(2) Lease. If the proposed transaction is a lease for a period of over one year, then within 30 days after receipt of the notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association in recordable form, which, at the election of the Association, shall be delivered to the lessee or shall be recorded in the Public Records of Volusia County, Florida at the expense of the lessee.

(3) Gift, devise or inheritance; other transfers. If the notice is of an intended gift or the unit owner giving notice has acquired his title by gift, devise or inheritance or in any other manner not previously approved by the Association, then within 30 days after receipt of the notice and information the Association must either approve or disapprove the donee or the continuance of the transferee's ownership of his unit. If approved, the approval shall be stated in a form. The certificate shall be recorded in the Public Records of Volusia County, Florida, at the expense of the unit owner.

c. Approval of corporate owner or purchaser. Since the condominium may be used only for residential purposes and a corporation cannot

occupy a unit for that use, the approval of ownership of a unit by a corporation may be conditioned by requiring that all persons occupying the unit be approved by the Association.

12.3 Disapproval by the Association. If the Association shall disapprove a transfer or ownership of a unit, the matter shall be treated in the following manner:

a. Sale. If the proposed transaction is a sale and if the notice of sale given by the unit owner shall so demand, then within 30 days after receipt of the notice and information the Association shall deliver or mail by certified mail to the unit owner an agreement signed by a purchaser approved by the Association and obligating the purchaser to buy the unit upon the terms hereafter stated. The seller shall be obligated to sell the unit to the purchaser upon the following terms:

(1) At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(2) The purchase price shall be paid in cash, or upon terms approved by the Seller.

(3) The sale shall be closed within 30 days after the delivery or mailing of the agreement to purchase, or within ten days after the determination of the sale price if it is by arbitration, whichever is the later.

(4) A certificate of the Association executed by its president and secretary and approving the purchaser shall be recorded in the Public Records of Volusia County, Florida, at the expense of the purchaser.

(5) If the Association shall fail to provide a purchaser upon the demand of the unit owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval as elsewhere provided. The certificate shall be recorded in the public records of Volusia County, Florida, at the expense of the purchaser.

b. Lease. If the proposed transaction is a lease, the unit owner shall be advised in writing of the disapproval and the lease shall not be made.

c. Gifts; devise or inheritance; other transfer. If the notice is of a proposed gift, the unit owner shall be advised in writing of the disapproval and the gift shall not be made. Any attempted gift to a party who is not approved by the Association shall be void. If the unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within 30 days after receipt from the unit owner of the notice and information required to be furnished, the Association shall deliver or mail by certified mail to the unit owner an agreement signed by a purchaser approved by the Association and obligating the purchaser to buy the unit upon the terms hereafter stated. The seller shall be obligated to sell the unit to the purchaser upon the following terms: (1) The sale price shall be the fair market value determined by agreement between the seller and purchaser within 30 days from the delivery or mailing of the agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall

be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit. A judgment of specific performance of the sale upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(2) The purchase price shall be paid in cash or upon terms approved by the seller.

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

(4) A certificate of the Association executed by its president and secretary and approving the purchaser shall be recorded in the public records of Volusia County, Florida, at the expense of the purchaser.

(5) If the association shall fail to provide a purchaser in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval the ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided. The certificate shall be recorded in the Public Records of Volusia County, Florida, at the expense of the unit owner.

12.4 Mortgage. No unit owner may mortgage a unit nor any interest in it without the approval of the Association except to a bank, life insurance company or a savings and loan association, or to a vendor to secure a portion or all of the purchase price. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld.

12.5. Exceptions. The foregoing provisions of the section entitled "Maintenance of Community Interests" shall not apply to:

a. a transfer to or purchase by a bank, life insurance company or savings and loan association that acquires its title as the result of owning a mortgage upon the unit concerned, whether the title is acquired

by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings;

b. a transfer, sale or lease by a bank, life insurance company or savings and loan association that so acquires its title;

c. a transfer to a purchaser who acquires the title to a unit at a duly advertised public sale with open bidding that is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale;

d. a mortgage or transfer to or a purchase or other acquisition by Developer, nor to a lease, mortgage, sale or other transfer by Developer.

12.6 Unauthorized transactions. Any sale, mortgage, lease or assignment of lease that is not authorized pursuant to the terms of this declaration shall be void unless subsequently approved by the Association.

13. Compliance and Default. Each unit owner and the Association shall be governed by and shall comply with the terms of the Declaration of Condominium, Articles of Incorporation of the Association and the Bylaws and Regulations adopted pursuant to those documents, and all of those documents and regulations as they may be amended from time to time. The Association and unit owners shall be entitled to the following relief in addition to the remedies provided by the Condominium Act.

13.1 Negligence. A unit owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that that expense is not met by the proceeds of insurance carried by the Association.

13.2 Costs and attorneys' fees. In any proceeding arising because of an alleged failure of a unit owner or the Association to comply with the

requirements of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws, or the Regulations, and those items as they may be amended from time to time. the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

13.3. No waiver of rights. The failure of the Association or any unit owner to enforce any covenant, restrictions or other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws or the Regulations shall not constitute a waiver of the right to do so thereafter.

14. Purchase of Units by Association. The Association shall have the power to purchase apartment units subject to the following provisions:

14.1 Decision. The decision of the Association to purchase an apartment unit shall be made by its Directors, without the necessity of approval by its membership, except as is hereinafter expressly provided for.

14.2 Limitation. If at any time the Association shall be the owner or agreed purchaser of three (3) or more apartment units in the Condominium, it may not purchase any additional apartment units therein without the prior written approval of seventy-five (75%) percent of the members eligible to vote. If at any time the Association shall be the owner or agreed purchaser of an aggregate of ten (10) or more apartment units in all of the Condominiums administrated and operated by it, it may not purchase any additional apartment units without the prior written approval of seventy-five (75%) percent of the members eligible to vote. A member whose apartment unit is the subject matter of the proposed purchase shall be ineligible to vote thereon, provided, however, that the limitations hereof shall not apply to apartments to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent assessments where the bid of the Association does not exceed the aggregate of the amounts due by virtue of any and all senior or superior liens against the apartment unit plus the amount due the Association, nor shall the limitation of this

of such liens if the consideration therefor does not exceed the cancellation of such lien and the assumption of any existing mortgage indebtedness on the apartment unit.

15. Right of Developer. Notwithstanding anything herein to the contrary, the Developer shall have the right of first refusal to purchase any apartment unit which the Association shall have the right to purchase upon the same price and at the same terms available to the Association, such right of first refusal to continue until such time as the Developer shall have completed, sold and closed on the sale of all apartment units in the Condominium, or until two (2) years after the recordation of this Declaration, whichever shall first occur.

16. Amendments. Except as elsewhere provided, this Declaration of Condominium may be amended in the following manner:

16.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

16.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed by either the board of directors of the Association or by the members at a meeting called for this purpose. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing that approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, the approvals must be either by -

a. not less than 75% of the entire membership of the board of directors and by not less than 75% of the votes of the entire membership of the Association; or

b. not less than 80% of the votes of the entire membership of the Association; or

c. not less than 50% of the entire membership of the board of directors in the case of amendments that are only for one or more of the following purposes:

(1) To correct misstatement of facts in the Declaration and its exhibits, including but not limited to the correction of errors in the legal description of land or in surveys of land. If the amendment is to correct the Declaration of Condominium so that the total of the undivided shares of unit owners in either the common elements, common surplus or common expenses shall equal 100%, the owners of the units and the owners of liens on the units for which modifications in the shares are being made also shall approve the amendment.

(2) To change the boundaries between units in the manner elsewhere stated provided the amendment is signed and acknowledged by the owners, lienors and mortgagees of the units concerned.

(3) To adopt amendments of the section entitled "Insurance" that are reasonably required by insurers or mortgagees of condominium property.

d. until the members are entitled to elect a majority of the directors, only by all of the directors, provided the amendment does not increase the number of units allowed by the declaration nor encroach upon the boundaries of the common elements.

16.3 Proviso. Provided, however, that no amendment shall discriminate against any unit owner nor against any unit or class or group of units, unless the unit owners so affected shall consent; and no amendment shall change any unit nor decrease the share in the common elements appurtenant to it, nor increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of mortgages on that unit shall join in the execution of the amendment. Neither shall an amendment make any change in the "Condemnation" unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment.

16.4 Execution and recording. An amendment adopted in any manner shall be evidenced by attaching a copy of the amendment to a certificate certifying

that the Amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of Volusia County, Florida. If the amendment is to correct the Declaration of Condominium so that the total of the undivided shares of unit owners in either the common elements, common surplus or common expenses shall equal 100%, the owners of the units and the owners of liens on the units for which modifications in the shares are being made also shall execute the certificate.

17. Termination. The condominium may be terminated in the following ways in addition to the manner provided by the Condominium Act.

17.1 Destruction. If it is determined in the manner elsewhere provided that the apartment building shall not be reconstructed because of major damage, the condominium plan of ownership thereby will be terminated without agreement.

17.2 Agreement. The condominium may be terminated by approval in writing by all record owners of units and all record owners of mortgages on units.

17.3 Approval and options to purchase. If the proposed termination is submitted to a meeting of the members of the Association and the notice of the meeting gives notice of the proposed termination, and if approvals by owners of not less than 75% of the common elements and by the record owners of all mortgages upon the units are obtained in writing not later than 30 days after the date of that meeting, then the approving unit owners shall have an option to buy all of the units of the other unit owners for the period ending on the 60th day after the date of that meeting. Approvals of the termination shall be irrevocable until the expiration of the option, and if the option is exercised, the approvals shall be irrevocable. The option shall be upon the following terms:

a. Exercise of option. The option shall be exercised in the following manner:

(1) A party desiring to exercise the option shall execute and deliver to the Association two counterparts of an agreement in a form supplied by the Association agreeing to purchase the units desired by him upon the terms hereafter stated. An agreement signed by the seller may be conditioned upon the termination of the condominium. If the agreement is not signed by the seller, it shall be an offer to purchase. If more than one offer is made for the purchase of the same unit, the unit will be sold under the first offer received by the Association, which offer shall be irrevocable and shall constitute an agreement to purchase conditioned upon the exercise of the option to purchase all of the units subject to the option and the termination of the condominium.

(2) The option shall be deemed to be exercised if the Association receives within the time stated contracts or offers for the purchase of all of the units owned by the unit owners who do not approve the termination.

(3) The exercise of the option shall be evidenced by the certificate of the Association executed by its president and secretary stating that all of the units owned by the unit owners who do not approve the termination have been purchased and identifying the purchasers and the units purchased by them. A copy of the certificate shall be delivered or mailed by certified or registered mail return receipt requested to each record owner of the units being purchased, together with an executed counterpart of the agreement or offer to purchase each unit owned by the person receiving the certificate.

b. Price. The sale price of a unit sold under an agreement signed by the seller shall be the price stated in the agreement. The sale price of a unit sold under an offer to purchase shall be the fair market value determined by agreement between the seller and purchaser within 30 days from the delivery or mailing of the agreement to the seller. In the absence of agreement as to price,

the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their specific performance of the sale upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

c. Payment. The purchase price shall be paid in cash, or upon terms approved by the seller and the Association.

d. Closing. The sale shall be closed within ten days following the determination of the sale price, or within 60 days after the exercise of the option, whichever shall last occur.

e. Termination. The closing of the purchase of all of the units subject to the option shall effect a termination of the condominium without further act except the filing of the certificate hereafter required.

f. Failure to purchase. If the option to purchase all of the units owned by unit owners who do not approve the termination of the condominium is not exercised, and if all of the sales under the option are not closed within a reasonable time after the closing date provided above, the proposed termination of the condominium shall fail. The failure shall be evidenced by the certificate of the Association, and thereafter the offers and agreements to purchase under this provision that have not resulted in closed sales shall be void.

17.4 Certificate The termination of the condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its president and secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Volusia County, Florida.

17.5. Shares of owners after termination. After termination of the condominium, unit owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees and lienors shall have mortgages and liens upon the respective undivided shares of the unit owners. The undivided shares of the unit owners shall be the same as the undivided shares of the common elements appurtenant to the owners' units prior to the termination.

17.6 Amendment. This section concerning termination cannot be amended without consent of all unit owners and of all record owners of mortgages upon the units.

18. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Condominium, the Articles of Incorporation of the Association, the Bylaws and Regulations of the Association, shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.

SEA WINDS OF NEW SMYRNA BEACH, INC.,

By

J. F. Coyle  
President

Attest:

Terry M. Foster  
Secretary

Signed, sealed and delivered

in the presence of.

Paula Anne A. Thayer Ballou  
Lola E. Eyles

STATE OF GEORGIA )  
COUNTY OF FULTON )

Before me personally appeared John M. Mueen and Jerry Gasser to me well known and known to me to be the individuals described in and who executed the foregoing instrument as President and Secretary of the above named SEA WINDS OF NEW SMYRNA BEACH, INC., a corporation, and severally acknowledged to and before me that they executed such instrument as such President and Secretary, respectively, of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal, this 4th day of May.



Susan M. Armstrong  
Notary Public

Notary Public, Georgia, State at Large  
My Commission Expires Mar. 29, 1982

DECLARATION OF CONDOMINIUM

OF

SEAWINDS OF NEW SMYRNA BEACH

SOUTH ATLANTIC AVENUE

NEW SMYRNA BEACH, FLORIDA 32069

MADE this 13 day of March, 1980, by SEAWINDS OF NEW SMYRNA BEACH, INC., a Florida corporation, called Developer, for itself, its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. Purpose. The purpose of this Declaration is to submit the lands described in this instrument and improvements on those lands to the condominium form of ownership and use in the manner provided by Chapter 718, Florida Statutes, hereafter called The Condominium Act.

1.1 Name and address. The name by which this condominium is to be identified is SEAWINDS OF NEW SMYRNA BEACH, a condominium, and its address is 4875 South Atlantic Avenue, New Smyrna Beach, Florida. It is hereafter called "the condominium."

1.2 The land. The lands owned by the Developer, which by this instrument are submitted to the condominium form of ownership, are the following described lands lying in Volusia County, Florida:

The South 150 feet of the North 550 feet of U. S. Lot 1, Section 6, Township 1E South, Range 35 East, lying East of the road right-of-way of State Road A1A, of the Public Records of Volusia County, Florida.

1.3 The above described lands in this Declaration are subject

This instrument prepared by  
W. M. Gillespie, Attorney at Law,  
233 N. Causeway, New Smyrna  
Beach, Florida 32069

4.2 Unit numbers.

|          |          |
|----------|----------|
| 4875 - A | 4875 - G |
| 4875 - B | 4875 - H |
| 4875 - C | 4875 - I |
| 4875 - D | 4875 - J |
| 4875 - E | 4875 - K |
| 4875 - F | 4875 - L |

4.3 Appurtenances to units. The owner of each unit shall own a share and certain interests in the condominium property, which share and interests are appurtenant to his unit, including but not limited to the following items that are appurtenant to the several units as indicated:

a. Ownership of common elements and common surplus. The undivided share in the land and other common elements and in the common surplus that are appurtenant to each apartment is as follows:

An undivided interest in the common elements according to the following schedule which fractional interest shall not be changed:

|                              |               |
|------------------------------|---------------|
| Units A and B                | .0891472 each |
| Units C, D, E, F, G, H and I | .0775193 each |
| Units J, K and L             | .0930235 each |

Said undivided interest is to be conveyed or encumbered with respective unit to which it appertains and shall not be separated or separately conveyed or encumbered and each such undivided interest in the common elements shall be deemed to be conveyed or encumbered with the respective unit to which it appertains even though the instrument of conveyance may refer only to the unit by its proper designation with reference to such undivided fractional interest in the common elements. Any attempt to separate the ownership interest in a unit from the ownership interest in the common elements pertinent to that unit shall be null and void.

17.5 Shares of owners after termination. After termination of the condominium, unit owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgages and liens shall have mortgages and liens upon the respective undivided shares of the unit owners. The undivided shares of the unit owners shall be the same as the undivided shares of the common elements appurtenant to the owners' units prior to the termination.

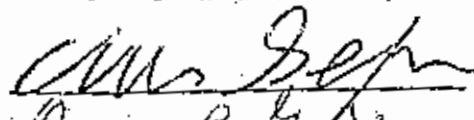
17.6 Amendment. This section concerning termination cannot be amended without consent of all unit owners and of all record owners of mortgages upon the units.

18. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase, or word, or other provision of this Declaration of Condominium, the Articles of Incorporation of the Association, the Bylaws and Regulations of the Association, shall not affect the validity of the remaining portions.

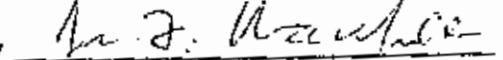
IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.

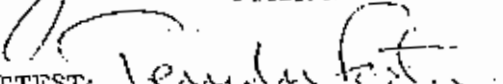
Signed, sealed and delivered  
in the presence of the following  
witnesses:

  
As to John F. McMullan

  
As to Terry M. Foster

SEAWINDS OF NEW SMYRNA BEACH, FL

By   
President

ATTEST:   
Secretary

STATE OF GEORGIA     )  
                              :  
COUNTY OF FULTON    )

Before me personally appeared JOHN F. McMULLAN, to me well known and known to me to be the individual described in and who executed the foregoing instrument as President of the above named SEAWINDS OF NEW SMYRNA BEACH, INC., a corporation, and acknowledged to and before me that he executed such instrument as such President of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 13<sup>th</sup> day of March, 1930.

Osma R. Gentry  
Notary Public

My commission expires February 1931

STATE OF FLORIDA     )  
                              :  
COUNTY OF VOLUSIA    )

Before me personally appeared TERRY M. FOSTER, to me well known and known to me to be the individual described in and who executed the foregoing instrument as Secretary of the above named SEAWINDS OF NEW SMYRNA BEACH, INC., a corporation, and acknowledged to and before me that he executed such instrument as such Secretary of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 13<sup>th</sup> day of March, 1930.

Osma R. Gentry  
Notary Public

My commission expires February 1931

JOINDER OF MORTGAGEE

AMERIFIRST FEDERAL SAVINGS AND LOAN ASSOCIATION (formerly First Federal Savings and Loan Association of Miami) a corporation organized and existing under the laws of the United States of America, herein called the Mortgagee, the owner and holder of a mortgage upon the following described lands in Volusia County, Florida:

The South 150 feet of the North 550 feet of U. S. Lot 1, Section 6, Township 18 South, Range 35 East, lying East of the road right-of-way of State Road 41A, of the Public Records of Volusia County, Florida.

Subject to easement in favor of Frank A. Ford, Trustee, for a walk-way to the Atlantic Ocean over the Northerly three (3) feet of the captioned real estate, as set forth in instrument dated July 11, 1974 and recorded in Official Record Book 1735, Page 1006, Public Records of Volusia County, Florida.

which mortgage is dated June 19, 1978 and is recorded in Official Records Book 1991, Page 1652, Public Records of Volusia County, Florida, joins in the making of the foregoing Declaration of Condominium, and the Mortgagee agrees that the lien of its mortgage shall be upon the following described property in Volusia County, Florida.

All of the units of SEA WINDS OF NEW SMYRNA BEACH, a condominium, according to the Declaration of Condominium.

TOGETHER with all of the appurtenances to the units, including but not limited to all of the undivided shares in the common elements.

WITNESSES:

Beth Swickbank  
Donald R. Kelly

AMERIFIRST FEDERAL SAVINGS AND LOAN ASSOCIATION

By: George Ratchiff

Attest: John M. Ratch

STATE OF FLORIDA  
COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me personally appeared George Ratchiff and Hazel M. Naugle respectively Assistant Vice President and Assistant Secretary of AMERIFIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation organized and existing under the laws of the United States of America, to me known to be the individuals and officers described in and who executed the foregoing instrument and severally acknowledged the execution thereof to be their free act and deed as such officers thereunto duly authorized; and that the official seal of said corporation is duly affixed thereto, and the same is the free act of said corporation.

WITNESS my hand and official seal this 15th day of March, 1980.

Notary Public  
JAMES K. RUSH  
Notary Public  
JAMES K. RUSH  
Notary Public  
P. O. BOX 2206

John M. Ratch  
Notary Public  
My commission expires:

4.2 Unit numbers.

|          |          |
|----------|----------|
| 4875 - A | 4875 - G |
| 4875 - B | 4875 - H |
| 4875 - C | 4875 - I |
| 4875 - D | 4875 - J |
| 4875 - E | 4875 - K |
| 4875 - F | 4875 - L |

4.3 Appurtenances to units. The owner of each unit shall own a share and certain interests in the condominium property, which share and interests are appurtenant to his unit, including but not limited to the following items that are appurtenant to the several units as indicated:

a. Ownership of common elements and common surplus. The undivided share in the land and other common elements and in the common surplus that are appurtenant to each apartment is as follows:

An undivided interest in the common elements according to the following schedule which fractional interest shall not be changed:

|                              |               |
|------------------------------|---------------|
| Units A and B                | .0301472 each |
| Units C, D, E, F, G, H and I | .0775193 each |
| Units J, K and L             | .0930235 each |

Said undivided interest is to be conveyed or encumbered with respective unit to which it appertains and shall not be separated or separately conveyed or encumbered and each such undivided interest in the common elements shall be deemed to be conveyed or encumbered with the respective unit to which it appertains even though the instrument of conveyance may refer only to the unit by its proper designation with reference to such undivided fractional interest in the common elements. Any attempt to separate the ownership interest in a unit from the ownership interest in the common elements pertinent to that unit shall be null and void.

STATE OF GEORGIA     )  
                              :  
COUNTY OF FULTON    )

Before me personally appeared JOHN P. McMULLAN, to me well known and known to me to be the individual described in and who executed the foregoing instrument as President of the above named SEAWINDS OF NEW SMYRNA BEACH, INC., a corporation, and acknowledged to and before me that he executed such instrument as such President of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 13<sup>th</sup> day of March, 1980.

Oliver R. Gentry  
Notary Public

My commission expires February 28, 1981

STATE OF FLORIDA     )  
                              :  
COUNTY OF VOLUSIA    )

Before me personally appeared TERRY M. FOSTER, to me well known and known to me to be the individual described in and who executed the foregoing instrument as Secretary of the above named SEAWINDS OF NEW SMYRNA BEACH, INC., a corporation, and acknowledged to and before me that he executed such instrument as such Secretary of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 13<sup>th</sup> day of March, 1980.

Oliver R. Gentry  
Notary Public

My commission expires February 28, 1981  
Notary Public, State of Florida at Large  
Qualified on January 1, 1979, No. 12321  
Expiration Date: February 28, 1981