

**DECLARATION OF CONDOMINIUM
FOR THE OCEAN GALLERY VILLAGE DEL PRADO
A CONDOMINIUM**

1. Background

Sun-Mark II Associates, a joint venture, hereinafter referred to as "Owner", is the owner of the real property, lying in St. Johns County, Florida, legally described in Exhibit 2 attached hereto and made a part hereof.

On the property described in Exhibit 2, Owner intends to develop The Ocean Gallery Village Del Prado, comprised of 83 condominium dwelling units with their appurtenant improvements.

This condominium form of ownership will allot to each owner the individual ownership of a certain designated condominium parcel which includes, but is in no way limited to, the exclusive ownership of a designated unit, and in certain instances, a garage, together with an undivided interest in and to all of the common elements contained in The Ocean Gallery Village Del Prado, which are specifically described in and are subject to this Declaration.

It is desirable and necessary to create a means by which the intent and purposes of this condominium form of ownership may be carried through.

Exhibit references herein are a continuation of and consistent with the Exhibit references in the Prospectus for this condominium. Therefore, the references in the text may appear out of numerical order and several may be omitted since some documents appear in the Prospectus and not in the Declaration.

2. Declaration

The Owner, on behalf of itself and its successors, grantees, and assigns, does hereby declare that the lands described in Exhibit 2, attached hereto and made a part hereof, from and after the date of the recording of this Declaration in the office of the Clerk of the Circuit Court, in and for St. Johns County, Florida, shall be dedicated and submitted to the condominium form of ownership, as legally authorized by the Legislature of the State of Florida pursuant to the provisions of Chapter 718, Florida Statutes, in accordance with the terms set forth, and the same shall continue in existence until this Declaration is terminated or abandoned in accordance with the laws of the State of Florida or this Declaration.

The inclusion of the land described in any Exhibit attached to this Declaration (exclusive of the lands described in Exhibit 2 attached hereto) shall not be deemed to be an obligation on the part of the Owner to submit said lands, or any part thereof, to condominium type ownership, and inclusion by Owner in the development plan of said lands described in any Exhibits attached to this Declaration (exclusive of the lands described in Exhibit 2, attached hereto) shall in no way constitute an encumbrance, restriction, condition, reservation, limitation, or covenant affecting said land.

All provisions of this Declaration shall be construed to be perpetual covenants running with the land and with every part thereof and interest therein, and every condominium parcel owner and claimant of the land or any part thereof or interest therein, and his heirs, executors, and administrators, successors, and assigns shall be bound by all of the provisions of this Declaration, unless this Declaration shall be terminated pursuant to the Condominium Act and/or as provided herein. Both the burdens and benefits of these covenants shall run with each condominium parcel as herein defined.

3. Name and Definitions

The name of this condominium is The Ocean Gallery Village Del Prado, a Condominium. The address is Route 5, Box 17K, St. Augustine, Florida 32084.

The terms used in this Declaration and its exhibits shall have the meaning stated in the Condominium Act (Chapter 718, Florida Statutes, 1983) as it exists on the date hereof and as follows unless the context otherwise requires:

- 3.1 **Assessments:** There shall be three assessments associated with this condominium. One assessment for the Ocean Gallery Village Del Prado Condominium Association, Inc. and two assessments for the Ocean Gallery Property Owner's Association, Inc.
 - 3.1.1 **Condominium Association Assessment** shall mean the unit owner's share of the funds required for the cost of maintaining, repairing and managing the property and common elements of the condominium, which are, from time to time, assessed against unit owners.
 - 3.1.2 **Property Owner's Association Assessment** shall mean the unit owner's share of the funds required for the cost of maintaining, repairing and managing property which may be owned by the Property Owner's Association, including the driving surfaces, parking areas, boardwalks, ocean front beach area, and certain recreational facilities, which are from time to time assessed against unit owners.
 - 3.1.3 **Garage Assessment** shall mean the garage owner's share of the funds required for the maintenance, repair, and management of the garages which are, from time to time, assessed against garage owners. This assessment shall be solely limited to garage owners.
- 3.2 **Association:** The Association means The Ocean Gallery Village Del Prado Condominium Association, Inc., a nonprofit corporation under the laws of the State of Florida, responsible for the operation of the condominium, its successors and assigns.
- 3.3 **Common Elements:** Common elements shall include all the condominium property not included in the unit, plus tangible personal property required for the maintenance and operation of the common elements, as well as other items stated in the Condominium Act. Garages are not common elements.
- 3.4 **Common Expense:** All expenses and assessments properly incurred by the Association for the condominium, including but not limited to:
 - 3.4.1 Expenses of administration, maintenance, operation, repair or replacement of the common elements, and of the portions of units and limited common elements to be maintained by the Association.
 - 3.4.2 Management and administration of the Association, including, but not limited to, compensation paid by the Association to managing agents, accountants, attorneys, and other employees;
 - 3.4.3 Any other items held by or in accordance with the other provisions of this Declaration or the other Condominium Documents to be common expenses.
- 3.5 **Common Surplus:** Common surplus shall be the excess of all receipts of the Association collected on behalf of the condominium, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, over the amount of common expenses.
- 3.6 **Complex:** The complex shall mean this condominium and all other condominiums which may be constructed by Owner upon the property set forth in Exhibit 3 hereto.
- 3.7 **Condominium:** Condominium means the Ocean Gallery Village Del Prado.
- 3.8 **Condominium Documents:** Condominium documents include this Declaration, together with all Exhibits attached hereto, Articles of Incorporation of the Association; the By-Laws of the Association; the Rules and Regulations of the Association; Contract for Sale; the Articles of Incorporation of the Ocean Gallery Property Owner's Association; and, all other documents required pursuant to the Condominium Act (Chapter 718, F.S.).

- 3.9 **Condominium Parcel:** A unit, and its limited common elements, together with an undivided share in the common elements and common surplus which are appurtenant to the unit.
- 3.10 **Condominium Property:** Condominium property means and includes the land in the condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto, for use in connection with the Condominium.
- 3.11 **Garage:** Parcel G49 through G73 of Exhibit 7 upon which a vehicle parking enclosure is constructed. The exterior of the garages shall be maintained by the Property Owner's Association at the exclusive cost of garage owners.
- 3.12 **Garage Owner:** Any person who, at any given point in time, holds fee simple title in and to any particular garage.
- 3.13 **Limited Common Elements:** Limited common elements means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, and shall include the following:
 - 3.13.1 The balcony/patio.
 - 3.13.2 The enclosure for the air conditioning equipment (if applicable).
 - 3.13.3 The mail box.
- 3.14 **Majority:** The word majority shall mean the number of unit owners required to make up 51 percent or more of the votes assigned in the Condominium Documents to the unit owners for voting purposes.
- 3.15 **Owner:** Owner means Sun-Mark II Associates, a joint venture comprised of Calmark Communities, Inc., a California corporation licensed to do business in Florida, and Sunshine State Mortgage Company, a Florida corporation, its successors and assigns.
- 3.16 **Person:** Any individual, firm, corporation, trustee or other entity capable of holding title to real property.
- 3.17 **Property Owner's Association:** The Property Owner's Association means the Ocean Gallery Property Owner's Association, Inc., a nonprofit corporation under the laws of the State of Florida, responsible for the operation, management, maintenance and repair of those properties which may be conveyed to it by the Owner for the benefit, use and enjoyment of all unit owners within the complex.
- 3.18 **Share:** A share shall designate that percentage in and to the common elements and the common obligations attributable to each unit or condominium parcel.
- 3.19 **Unit:** A part of the condominium property which is subject to exclusive ownership and shall consist of a part of a building which according to the plot plan, contained herein as Exhibit 7, is identified and designated by number. However, garages are not units.
- 3.20 **Unit Owner:** Any person who, at any given point in time, holds fee simple title in and to any particular condominium parcel.

4. Plan of Development

- 4.1 The Condominium will be constructed on the property of Exhibit 2 and consist of 83 units in 10 buildings. A graphic description of the improvements constituting the Condominium and identifying the units and common elements, and their respective locations and approximate dimensions is attached hereto and made a part hereof as Exhibit 7. The legend and notes contained therein are incorporated herein and made a part hereof by reference. Each unit shall have a separate number as indicated and the limited common elements pertaining to that unit are those appurtenant thereto. While Exhibit 7 also depicts roadways, parking areas and garages, they are not common elements of the Condominium.

- 4.2 Common Plan: The Owner proposes to develop the Condominium upon the parcel of property described in Exhibit 2 hereto. In addition to developing the Condominium, the Owner also proposes to develop the complex on the property of Exhibit 3 which is contiguous and adjacent to the property described in Exhibit 2. The Ocean Gallery Village Del Prado, therefore, is a condominium within a multi-condominium development. The Owner is not committed to developing the condominiums proposed for development on Exhibit 3 and reserves the right to refrain from such development and to put such lands to any lawful use.
- 4.3 The Ocean Gallery Village Del Prado shall be operated and governed by the Ocean Gallery Village Del Prado Condominium Association, Inc., a nonprofit Florida corporation. Each unit owner in the condominium shall be assessed a fee for maintenance, management, and repair of the property and common elements of the Condominium.
- 4.4 Each unit owner in the Condominium will own a 1/83 share in the common elements and bear 1/83 of the Association expenses associated with that Condominium, regardless of the type of unit or building in which the unit is located.
- 4.5 Each unit owner in this condominium will be entitled to one vote and one membership in both the Condominium Association and the Property Owner's Association. The Owner does not contemplate the addition of any time share estates with respect to any units in this condominium.
- 4.6 Each unit owner in the condominium will be entitled to use the property of the Property Owner's Association and shall bear 1/83 of the expenses of the Property Owner's Association which are apportioned to the condominium.
- 4.7 The Owner will construct and convey fee simple ownership of parcels G49 through G73, inclusive, to purchasers who are desirous of owning a garage. Garages and open area on property reserved by the Owner for construction of garages shall be maintained by the Ocean Gallery Property Owner's Association. Each garage owner shall be assessed a special fee for maintenance and repair of the garage.
- 4.8 Recreational Facilities.

There will be two types of recreational facilities associated with this development:

- 4.8.1 Common Element Facilities: The Owner proposes to construct a recreational center on the property of Exhibit 2 as part of the common elements. It will be owned by all unit owners within the condominium and will be operated, managed, and maintained by the Condominium Association for the exclusive benefit of all unit owners within the condominium. The proposed recreation center will include an unheated swimming pool, whirlpool spa, bathhouse area, and barbeque facility as located on Exhibit 2. The Owner is not committed to development of the recreational center and reserves the right to refrain from such development and to put such lands to any lawful use.
- 4.8.2 Complex Shared Facilities: The Property Owner's Association may hold title to various properties and recreational facilities located within the complex which will be for the use of all owners of units within the complex. The shared facilities would include the beach area, the boardwalks, the recreation building, swimming pool, the tennis court facilities, as well as the driving and parking areas. This property and facilities would not constitute a portion of the common elements of this or any other condominium to be constructed at the site but will be owned, operated, managed, and maintained by the Property Owner's Association for the benefit of all unit owners within the complex. Although parking spaces and parking areas will be conveyed to and owned by the Property Owner's Association, one parking place will be assigned to each unit of the condominium by the Property Owner's Association. The remaining parking spaces shall be commonly used and the Property Owner's Association may not assign remaining spaces to any particular unit or units.

5. Ownership of Condominium Units.

Ownership of each condominium unit shall include the following interests, rights, easements, appurtenances, and privileges in and to the condominium property:

- 5.1 Real Property: Each condominium parcel together with all appurtenances thereto, shall for all purposes constitute a separate parcel of real property which shall contain all the rights, privileges, and characteristics of real property, such as the right to encumber. Conveyance, transfer, or encumbrance shall be accomplished in the same manner as with any other parcel of real property and shall be done independently of all other parts of the condominium property, subject only to the provisions, restrictions, and conditions as contained in the Condominium Documents.
- 5.2 Possession: Each unit owner shall be entitled to the exclusive possession of his unit and the limited common elements appurtenant thereto. Garage owners shall be entitled to exclusive use and possession of their garages.
- 5.3 Boundaries: Each unit and each garage shall be bounded as follows:
 - 5.3.1 Upper and Lower Boundaries: The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the perimetrical boundaries.
 - 5.3.1.1 Upper Boundary shall be the plane of the undecorated, finished ceiling.
 - 5.3.1.2 Lower Boundary shall be the horizontal plane of the undecorated, finished floor.
 - 5.3.2 Perimetrical Boundaries: The perimetrical boundaries of the unit shall be the vertical plane of the undecorated and/or unfinished inner surfaces of the walls bounding the unit, extended to intersections with each other and with the upper and lower boundaries.
 - 5.3.3 Boundaries-Further Defined: The boundaries of the unit shall not include all of those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of the perimeter walls and those surfaces above the undecorated finished ceilings of each unit, and those surfaces below the undecorated finished floor of each unit, and further, shall not include those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions, and further shall exclude all pipes, ducts, wires, conduits, and other utilities running through any interior wall or partition for the furnishing of utility services to other units and/or for common elements. In those units where attic storage access is provided, a unit owner may use the crawl space for storage at the unit owner's risk. Any damage caused to the unit or common elements by using this storage area shall be the singular expense of the unit owner.
 - 5.3.4 Patios and Driveways: A unit shall not include a patio or balcony; however, the patio or balcony appurtenant to any unit are limited common elements and are as such reserved for the exclusive use of the unit owner. Everyday maintenance of the patio or balcony shall be tended to by the unit owner. Any repair work necessary on the patio or balcony not resulting from negligence on the part of the unit owner, his employees, agents, servants, guests, and/or family members shall be a common expense.
 - 5.3.5 Floor plans are attached as Exhibit 8.
- 5.4 Appurtenances: Each unit shall include certain inseparable appurtenances which may or may not be individually described, conveyed, or encumbered. All rights, title, and interest in the inseparable appurtenances, shall pass with each unit, including but not limited to the following:
 - 5.4.1 Limited Common Elements: Each unit shall have the exclusive right and use of the limited common elements as specifically defined herein.

5.4.2 Common Elements:

5.4.2.1 The common elements shall be all parts of the condominium not included within the units. The ownership of each unit or units shall include and there shall pass with each unit as appurtenances thereto, whether or not separately described, all of the rights, title, and interest of a unit owner in the condominium common elements.

5.4.2.2 Del Prado consists of 83 units. Each unit owner will own a 1/83 share in the common elements and bear 1/83 of the association expenses associated with the common elements regardless of the type of unit or building in which the unit is located.

5.4.3 The equal fractional ownership, as set forth above, shall be used in all instances referred to in this Declaration where apportionment of ownership or expenses is required to be determined. The fraction shall be used in determining the ownership of common elements, the apportionment of expenses and/or surpluses in the event of casualty or loss, and the disposition of the proceeds of sale of any of the common elements, limited common elements, or units of this condominium.

5.4.4 All of the above appurtenances, however, shall be and continue to be subject to any easement for the benefit of other units, and for the benefit of the Owner, its successors and assigns in constructing and selling additional condominiums on the property of Exhibit 3; the Owner hereby reserving to itself, its successors, and assigns the right to the use of the common elements until all of the units in all of the condominiums to be erected on the property of Exhibit 3 are sold, and such right shall be a covenant running with the land and creating an equitable servitude.

5.5 Easements for the Benefit of the Unit: The following easements shall exist for each other unit owner and for the Association:

5.5.1 Easement for Air Space: The appurtenances shall include an exclusive easement for the use of air space occupied by the unit as it exists at any particular time and as the unit may be altered or reconstructed from time to time.

5.5.2 Ingress and Egress: Easements through the common elements for ingress and egress shall continue for all unit owners and the Owner, provided, however, that their use of the common elements is in accordance with the terms and conditions of the Condominium Documents.

5.5.3 Structural Support: Every portion of a unit contributing to the support of the building within which the unit is housed shall be burdened with an easement of support for the benefit of all units, common elements, and limited common elements contained in the building.

5.5.4 Utilities: Easements over, under, and through the units, common elements, and limited common elements for conduits, ducts, plumbing, wiring, and other facilities for the furnishings of utility services to other units, common elements, and limited common elements provided, however, that such easements through a unit shall be based on the plans for the building wherein the unit is housed, unless otherwise approved in writing by the owner of the unit.

5.5.5 Emergency Easements for Ingress and Egress: Easements shall exist over, through, and around other units, courtyards, and other limited common elements whenever an emergency exists and the circumstances dictate.

5.5.6 Easement set forth in Article 13 where applicable.

- 5.6 **Voting Rights:** Each unit carries with it the right to membership and one vote at member meetings of the Association and Property Owner's Association, pursuant to the Articles of Incorporation of those Associations attached hereto. The Owner shall be deemed an owner of each unit which has been issued a certificate of occupancy but to which title has not been transferred to a purchaser other than the Owner. The Owner shall be entitled to cast one vote for each such unit.
- 5.7 **Association Membership:** The owners of a vested present interest in fee title to any unit of this condominium shall automatically become members in the Condominium Association and the Property Owner's Association. Membership shall terminate when they no longer own the interest.

6. **The Ocean Gallery Associations**

- 6.1 **The Ocean Gallery Village Del Prado Condominium Association, Inc.:** The Articles of Incorporation of The Ocean Gallery Village Del Prado Condominium Association, Inc., a nonprofit Florida corporation, are attached hereto and made a part hereof as Exhibit 9. The principal purpose of this corporation is to perform the acts and duties desirable for proper management of the units, common elements and limited common elements of this condominium and to levy and enforce collection of assessments that are necessary to perform the acts and duties expressly or impliedly imposed upon the Association.
- 6.1.1 The Condominium Association possesses all of the powers and duties reasonably necessary to operate this condominium as set forth in this Declaration, the Articles of Incorporation of the Association, the By-Laws (attached hereto and made a part hereof as Exhibit 10) and as they may be amended. It shall also have all of the powers and duties of an association under the Condominium Act, including the power to acquire and enter into agreements whereby it acquires ownership, leaseholds, memberships and other possessory or use interests in lands or facilities, including but not limited to country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the condominium, and to construct or have constructed additional structures upon the land of the common elements intended to provide for the enjoyment, recreation or other use or benefit of unit owners in the condominium, and to declare the expenses of construction, rental, maintenance, membership, fees, operations, replacements and other undertakings in connection therewith to be common expenses and make covenants and restrictions concerning the use of the same by unit owners, and to invoke such other provisions as are not inconsistent with the Condominium Act as may be desired; and the power to contract for the management of this condominium, and to delegate to a management agent all of the powers and duties of the corporation except such as are specifically required by the Laws of Florida, this Declaration or the By-Laws, to have the approval of the Board of Directors or the membership of the Association. The Owner and all persons hereafter owning a vested present interest in the fee title to any one of the units in any of the condominiums erected by Owner upon the lands set forth in Exhibit 2, shall automatically be members of the Association and their memberships shall automatically terminate when they no longer own the interest.
- 6.2 **The Ocean Gallery Property Owner's Association, Inc.:** The Articles of Incorporation of the Ocean Gallery Property Owner's Association, Inc., a nonprofit Florida corporation, are attached hereto and made a part hereof as Exhibit 4. The principal purpose of this corporation is to perform the acts and duties desirable for proper management of the properties to which it holds title or will hold title, which are for the use, enjoyment and benefit of the owners of units in this condominium or any condominium constructed by the Owner upon the property in Exhibit 3 hereto, and, to maintain and enforce standards for the architectural and landscaping appearance of the grounds, buildings, structures, facilities, improvements, and plantings upon the lands in the complex. To achieve these ends, the Property Owner's Association is empowered to levy and enforce collection of assessments that

are necessary to perform the acts and duties expressly and impliedly imposed upon it.

6.2.1 The Property Owner's Association possesses all the powers and duties reasonably necessary to upgrade, manage and maintain the properties to which it holds or may hold title and as set forth in the Articles of Incorporation and this Declaration. The Association shall have the power to levy assessments against each unit owner within the complex for purposes of improving, maintaining, repairing and replacing the properties and improvements which it owns, for the benefit of unit owners. The Property Owner's Association may elect to levy their assessments through the particular condominium association for apportionment among its members. Each owner of a unit within the complex constructed by the Owner upon the lands in Exhibit 3 shall automatically become a member of the Property Owner's Association, and shall be entitled to one vote in the Association subsequent to the time the Owner turns over control of the Property Owner's Association to the unit owners.

The Property Owner's Association is empowered to elect and maintain an Architectural Review Committee which shall be responsible for adopting and enforcing the architectural and landscaping standards on behalf of the Property Owner's Association. The purpose of the Architectural Review Committee is to assure that each condominium within the complex uniformly maintains its units and common elements in order to create a pleasing and homogeneous appearance. The Architectural Review Committee will be empowered to order any condominium association which does not meet the standards to comply within a given period of time with those standards. If the association does not comply, the Committee may direct the Property Owner's Association to perform that work necessary to bring the condominium into compliance and the Property Owner's Association may levy assessments against the unit owners of that condominium or its condominium association for the costs incurred in achieving compliance.

7. Assessments

The Board of Directors of the Association shall provide annual budgets in advance for each fiscal year. The budgets shall project anticipated income as well as estimated expenses of operating the condominium. The budgets shall detail separate estimates for fire insurance and extended coverage; vandalism and malicious mischief insurance for the units, the limited common elements, and common elements; public liability insurance for the common elements; operating expenses, management expenses; maintenance expenses; repairs; water and sewer charges; replacement reserve and reasonable operating reserve for the common elements; annual budget for the Property Owner's Association; and any other item the Board deems proper or which is required under Florida Law. Failure of the Board to include an item in the annual budget shall not preclude the Board from levying an additional assessment in any calendar year for which the budget has been projected.

The total regular annual assessment for each fiscal year assessed against each unit shall be composed of two parts. Part One of the assessment shall apportion the costs and expenses directly attributable to the maintenance, repair, operation, and management of the common elements of the Condominium including, among other things, the buildings, grounds, and landscaping. Part Two of the assessment shall consist of the proportionate share of expenses attributable to the Condominium for the operation, management, maintenance, and repair of the property owned by the Property Owner's Association for the benefit of all unit owners within the complex.

7.1 Each unit's apportioned share of Part One of the assessment shall be computed by dividing the total costs and expenses associated with the Condominium common elements, by the total number of completed units in the condominium. Each unit owner's proportionate share of Part Two of the assessment shall be calculated by dividing the total cost attributable to Part Two of the expenses, by the total number of completed units within the complex.

- 7.2 After adoption of the budgets and determination of the annual assessment per unit, the Association shall assess the sum by promptly delivering or mailing notice of it to the owner of the unit, or person designated to cast the vote of a unit, as the case may be, at the most recent address shown by the records of the Association. One-twelfth of the annual assessment shall be due and payable in advance to the Association on the first day of each month, regardless of whether or not members are sent or actually receive a written notice. The Association shall have power to levy special assessments, if necessary, to cover the aforesaid types of expenses, and shall have the power to levy other special assessments as provided herein. All income that may be received by the Association from the rental or the licensing of any part of the common elements shall be used for the purpose of reducing prospective common expenses prior to establishing the annual budget. If a new annual assessment is not made in any year as required, an assessment in the amount of the last prior annual assessment shall continue in force until changed by an amended assessment.
- 7.3 The owners of each unit shall be liable, jointly and severally, to the Association and/or the Property Owner's Association for the payment of all assessments, regular or special, made by either or both of the Associations and for all costs of collection of delinquent assessments. If assessments are not paid within sixty days after their due date, the Associations may elect to declare all past due installments and all installments to become due during the remainder of the fiscal year, due and payable in full. The assessments shall become property liens enforceable by the Associations through judicial foreclosure. Assessments that are unpaid for over thirty days after due date shall bear interest at the rate of fifteen per cent per annum until paid.
- 7.4 Each Association (Condominium and Property Owner's) shall have a lien on each condominium parcel for any unpaid assessments and interest thereon levied against the owner of the condominium parcel. The lien shall be effective from the time of recording a claim of lien in the Public Records of St. Johns County stating the description of the condominium parcel, the name of the record owner, the amount due and the date when due, and the lien shall continue in effect until all sums secured by it are fully paid. All claims of lien shall be signed by an officer or agent of the Association. When any lien has been paid in full, the party making payment shall be entitled to receive a satisfaction of lien in a form that may be recorded in the public records of the county. All liens herein provided for shall be subordinate to the lien of a mortgage or other lien recorded before the time of recording the claim of lien. Either Association may take such action as it deems necessary to collect assessments by personal action or by foreclosing the lien, and may settle and compromise them if the Association deems it to be in its best interests. Any delinquent owner shall pay all costs, including reasonable attorneys' fees, for enforcing a lien. The lien shall secure the costs and fees. The Associations shall be entitled to bid at any sale held pursuant to any action to foreclose an assessment lien, and to apply as credit against the bid, all sums due to the Association that are covered by the lien.
- 7.5 An assessment lien shall be subordinate to any recorded institutional first mortgage, regardless of when the assessment lien claim was recorded, but not to any other mortgage. For the purposes of this instrument, an "institutional first mortgage" is defined as a first mortgage originally executed and delivered to a bank, savings and loan association, real estate investment trust or insurance company authorized to transact business in Florida. Upon recordation of the Certificate of Title issued pursuant to the foreclosure of an institutional first mortgage, or the recordation of a deed obtained in lieu of a foreclosure action, any claim or lien for assessments due and payable before recordation shall be deemed canceled, but the lien for assessments due and payable accruing after the recordation of the Certificate of Title or the deed in lieu of foreclosure shall not be impaired and shall be effective as to the grantee under the Certificate of Title or deed.
- 7.6 Any person who acquires an interest in a unit, except through foreclosure or by voluntary deed in lieu of foreclosure of an institutional first mortgage, shall be liable with the grantor for all unpaid assessments up to the time of the transfer of ownership.
- 7.7 A person purchasing or encumbering a unit shall have the right to rely upon any statement made in writing by a corporate officer regarding assessments.

against the units that have been made and that are due and payable to an Association, and the Association and its members shall be bound thereby.

- 7.8 At any time, the Association may require unit owners to maintain a minimum balance on deposit with the Association to cover future assessments. The deposit shall be assigned on the fractional basis hereinabove provided, and shall not exceed three months assessment.
- 7.9 As used in this Section 7, the term "Association" and its plural forms shall be deemed to include both the Ocean Gallery Village Del Prado Condominium Association and the Ocean Gallery Property Owner's Association, unless specifically referred to as one or the other.

8. Special Assessment

- 8.1 In the event that any taxing authority having jurisdiction over the condominium shall levy or assess any tax or special assessment against the condominium property as a whole, as opposed to levying and assessing such tax or special assessment against each unit and its appurtenant undivided interest in the common elements (as now provided by law), then such tax or special assessment so levied shall be paid as a common expense by the Association. Any taxes or special assessments which are to be so levied shall be included, wherever possible, in the estimated annual budget of the Association, or shall be separately levied and collected as an assessment by the Association against all of the owners of all units in existence in the condominium if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by the Association in the event that such tax or special assessment is levied against the condominium as a whole, instead of as against each separate unit and its appurtenant undivided interest in common elements, shall be apportioned among the owners by using the same fractional basis outlined in Article 5.
- 8.2 In the event that any tax or special assessment shall be levied against the condominium without apportionment by the taxing authority to the units and appurtenant undivided interest in common elements, then the assessment by the Association (which shall include the proportionate share of such tax or special assessment attributable to each unit) shall separately specify and identify the amount of such assessment attributable to such tax or special assessment. The amount of such tax or special assessment so designated shall be and constitute a lien prior to all mortgages and encumbrances upon any unit and its appurtenant undivided interest in common elements, regardless of the date of the assessment and/or recording of such mortgages or encumbrance to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each unit and its appurtenant undivided interest in common elements.
- 8.3 All personal property taxes levied or assessed against personal property owned by the Association shall be paid by said Association and shall be included as a common expense in the annual budget of the Association.
- 8.4 In apportionment of any tax or special assessment, in accordance with the provisions of this article, such apportionment shall be made without regard to the existence of any exclusive right to use an area constituting a limited common element which may be an appurtenance to any unit.

9. Maintenance, Repairs, and Alterations

The maintenance and repair of the condominium parcels shall be the responsibility of both the Association and of the individual unit owners.

- 9.1 The Association shall be responsible for the maintenance, repair, and replacement of the following:
 - 9.1.1 All portions of any unit, except interior walls and partitions not contributing to the support of the building within which the unit is housed, which portion shall include, but not be limited to, the roof and its structure, exterior walls of the building housing unit, and interior boundary walls of the unit.

- 9.1.2 All portions of the units which contribute to the support of the buildings, excluding interior walls and partitions, ceilings and floors not damaged due to structural defect, but specifically including all items contained in 9.1.1 above.
- 9.1.3 All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained in the portions of the unit contributing to the support of the building, and all such facilities contained within a unit which serve part or parts of the condominium other than the unit within which they are contained.
- 9.1.4 All damage done as a result of and incident to the repair of any of these facilities shall be repaired as promptly as possible so as not to inconvenience the unit owners.
- 9.1.5 The common elements and that portion of the limited common elements not specified to be maintained by the Owner in paragraph 9.2.
- 9.2 Each unit owner, individually, shall be responsible for the maintenance, repair, and replacement and have the responsibility and bear the expense of the following:
 - 9.2.1 All portions of the unit and limited common elements, except portions to be maintained, repaired and replaced by the Association. All maintenance, repair and replacement to be done promptly. Such portions of the unit to be maintained, replaced and repaired by the unit owner shall include, but not be limited to, the following items:
 - 9.2.1.1 Windows, screens, hose bibs, exterior lights and outlets, exterior doors, door frames and door hardware, sliding glass doors, all air conditioning and heating equipment, regardless of location of same, range, water heater, refrigerator, dishwasher, disposal, trash compactor (where applicable), intercom system (where applicable), fans and all other appliances and equipment, including pipes, ducts, wiring, fixtures and/or other connections required to provide water, light, power, air conditioning and heating, telephone, temporary and permanent C.A.T.V., sewage and sanitary service to his unit, and which may now or hereafter be situated in his unit or under the floor slab of his unit.
 - 9.2.1.2 All inside walls and partitions not contributing to the support of the building within which the unit is housed, and any and all finishes, painting and decorating upon those walls.
 - 9.2.1.3 All drywall attached to the roof trusses (ceiling), exterior building walls, interior unit boundary walls and any and all finishes, painting and decorations upon those surfaces.
 - 9.2.1.4 All floor finishes, including carpet and pad, ceramic tile, vinyl flooring and any other finish materials.
 - 9.2.1.5 All second floor components including stairs, materials and finishes, in those units having a second floor.
 - 9.2.1.6 All furnishings, decorating items, and all other accessories.
 - 9.2.1.7 Pest control to the extent required.
 - 9.2.1.8 To maintain all the Limited Common Elements pertaining to his unit which are not maintained by the Association.

The maintenance, repair and replacement of all the air conditioning and heating equipment appurtenant to each

unit, regardless of the location of the equipment, shall be at the sole expense of each unit owner. If any limited common element areas or limited common elements contained therein become unsightly, the Association may require proper care of the same.

- 9.2.1.9 Whenever the maintenance, repair and replacement of any items which the owner of a unit is obligated to maintain, repair or replace at his own expense, is occasioned by any damage or loss which may be covered by any insurance of the Association, proceeds therefrom shall be used for the purpose thereof; provided that any sums required in excess of such proceeds shall be paid by the unit owner.

9.3 Each unit owner, individually, covenants and agrees to:

- 9.3.1 Perform his responsibility in such a manner and at such times of day as to not interfere with other unit owners in the building or any of the buildings comprising the condominium and their enjoyment of their respective unit.
 - 9.3.2 Not paint or otherwise decorate, change, alter or modify the appearance of any portion of the building not contained within the unit, unless the prior written consent of the Association is obtained.
 - 9.3.3 Promptly report to the Association or its agent any defect or deficiency which may need repair, responsibility for the remedy of which is with the Association as above stated.
 - 9.3.4 Not make any structural or other changes, modifications or alterations to any portion of the unit or the building housing the unit which is designated to be maintained by the Association or to remove any portion thereof or do any other act which may jeopardize or impair the safety or soundness of the building housing the unit without first obtaining written consent of the Board of Directors of the Association, together with all mortgagees of each unit in the building.
 - 9.3.5 Not interfere with or impair any easement through, over or around his unit without first obtaining prior written consent of the Association and of the unit owners for whose benefit such easement exists and of the Owner if the easement is also for the benefit of the Owner, its successors or assigns.
 - 9.3.6 Not install wiring for electrical or telephone installations, or any type of television antenna, machine or air conditioning unit on the exterior, or, that may protrude from the exterior of the building housing the unit, except as authorized by the Association.
- 9.4 Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement of the interior of any unit (or limited common elements appurtenant to any unit except as set forth herein), it being understood that the liability or responsibility of the Association for the interior of any unit or for the limited common elements shall be limited to damages actually caused as a result of the Association's negligence and the Association shall not be obligated for damage caused by the negligence of any unit owner, their respective families, lessees, invitees and guests, but rather those persons shall be liable and responsible for any damages they may cause to any individual unit owner's property together with any damage which they may cause to the common elements, or limited common elements of another unit owner.

10. Enforcement of Maintenance Requirements

- 10.1 If the owner or owners of a unit fail to maintain it as required herein, or make any structural addition or alteration to a unit or limited common elements without the required written consent, either the Association or an owner of a unit shall have the right to force compliance with these provisions by legal action. The Association shall have the right to levy a

special assessment at any time against the owner or owners of the unit and the unit itself for the necessary sums to put the improvements within the unit in good condition and repair or to remove any unauthorized structural addition or alteration. After making the assessment, the Association may have its employees and agents enter the unit at any time to do such work as deemed necessary by the Board of Directors of the Association to enforce compliance with the provisions hereof.

- 10.2 The Association may enter into a contract with any firm, person, or corporation for the maintenance and repair of the condominium property. The Association shall determine the exterior color scheme of all buildings with the approval of the Property Owner's Association and shall be responsible for the maintenance thereof, and no owner shall paint an exterior wall, soffit, gable, door, window, patio, enclosure, or any exterior surface, at any time, without the written consent of the Association.
- 10.3 If the Association fails to maintain the condominium property in accordance with its obligations hereunder, any owner of a unit in the condominium, any member of the Property Owner's Association, or institutional first mortgagee, shall have the right to seek specific performance to compel the Association to do so, or if emergency repairs are needed to utilities, walls, etc., the owner of a unit may give the Association 48 hours' notice to make the repairs and if it is not done, the unit owner may make the repairs necessary to alleviate the emergency condition and the Association shall be obligated to reimburse the owner for the reasonable value of the repairs which were necessary to alleviate the emergency/dangerous condition and for which the Association has responsibility. Repairs shall be deemed emergency repairs only in situations where it poses a danger to the health and safety of residents or unit owners within the condominium, or clearly eminent danger of damage to the interior or contents of a unit or units, or any other structure or facility of the condominium. The Association shall make the determination as to whether or not repairs undertaken by unit owner were "emergency repairs", and to fix the amount of reimbursement, if any, due the unit owner.
- 10.4 If the Association fails to maintain the condominium property in accordance with the standards of the Property Owner's Association, the Property Owner's Association, the Architectural Review Committee, or both, shall have the right to take whatever steps and make whatever repairs are necessary to the condominium property to bring it into compliance with the standards. The Condominium Association shall be obligated to reimburse the Property Owner's Association for the cost of the work and/or repairs that were necessary.

11. Restraints Against Separation and Partitioning

The real property, common elements, limited common elements, and use interest therein, which are herein submitted to the condominium form of ownership, shall be utilized and operated as follows:

- 11.1 Restraints and Covenants Against Separation of Units From Common Elements and Limited Common Elements: The undivided share in the common elements and limited common elements which are appurtenant to a unit shall not be separated therefrom and shall pass with the title of the unit, whether or not separately described. A share in the common elements and limited common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit. Each unit owner, as a condition precedent to his acquiring title, covenants that he will at no time attempt to separate, in any form whatsoever, the common elements, or limited common elements which are appurtenant to his unit from his unit.
- 11.2 Restraints and Covenants Against Partitioning: In order to perpetuate and effectuate the intent hereof and for the preservation of the condominium and the condominium form of ownership, the ownership of the common elements and limited common elements shall remain undivided, and each unit owner as a condition precedent to his becoming owner, covenants that he will at no time attempt to file an action for partition.

12. Easements

Each of the following easements is a covenant running with the land of the Condominium and notwithstanding any of the other provisions of this Declaration, may not be amended or revoked and shall survive the termination of the Condominium as a condominium.

12.1 Easements for pedestrian traffic over, through, and across sidewalks, paths, and lanes, as the same may from time to time exist upon the common elements; and for the vehicular traffic over, through, and across such portions of the common elements as may from time to time be paved and attended for such purposes; or as may be required to adequately serve the lands now or hereafter owned by Owner which are adjacent to or in the vicinity of the condominium property, but the same shall not give or create in any person the exclusive right to park upon any portion of the condominium property, unless set forth in the Condominium Documents.

12.2 Utility easements as may be required for utility service in order to adequately serve the Condominium and to adequately serve the lands (other than the condominium property) now or hereafter owned by the Owner which are adjacent to or in the vicinity of the condominium property; provided, however, that easements through a unit shall only be based on the plans and specifications of the building housing the unit unless approved by the unit owner in writing.

12.3 Easements set forth in Article 5 and in paragraphs thereto, Articles 13 and 15 and paragraphs thereto.

13. Encroachments and Easements Over Common Elements

In the event any unit or limited common elements shall encroach upon any common element for any reason not caused by the purposeful or negligent act of the unit owner or owners, or agents of such owner or owners, an easement appurtenant to such unit or such limited common elements shall exist for the continuance of such encroachment into the common element, for so long as such encroachment shall naturally exist; and, in the event that any portion of the common elements shall encroach upon any unit or limited common element of a unit, then an easement shall exist for the continuance of such encroachment of the common element into any unit or limited common element for so long as such encroachment shall naturally exist. All properties covered by Exhibit 2 attached to this Declaration shall be subject to a perpetual easement for encroachments that now or hereafter exist caused by construction or settlement or movement of the buildings and such encroachments shall be permitted to remain undisturbed, and the easement shall continue until the encroachments no longer exist. The common elements, including but not limited to drives, walkways, greenbelts, lands and conservation areas, if any, are subject to a perpetual, nonexclusive easement, in favor of the adjoining lands described in Exhibit 3, for ingress and egress, by pedestrian and vehicular means, and for the furnishing of services and facilities for which the same are reasonably intended. Notwithstanding anything above provided in this article, the Condominium Association shall have the right to establish the rules and regulations governing the use and enjoyment of all the common elements in this Condominium and pursuant to which the owner or owners of any unit may be entitled to the exclusive use of any area or space or spaces.

14. Ingress-Egress and Utility Access

Access to units within the condominium will be provided by paved roadway from State Road A1A. The roadway will be constructed upon property which is encompassed in the parcel of land described in Exhibit 3.

The Owner, by execution of these documents, grants a perpetual ingress-egress and utility easement over the land described in Exhibit 16 hereto, for the benefit of units constructed by Owner within the complex. This easement is for the purpose of providing ingress-egress and utility access to the complex.

15. Retained Rights of Owner

- 15.1 The Owner shall have the right to transact any business necessary to consummate sales of condominium parcels, including, but not limited to, the right to maintain models, have signs identifying the condominium property and advertising the sale of condominium parcels, have employees in the offices and models and other condominium property, use the common elements, and show units. Sales office furnishings, model unit furnishings and signs and items pertaining to sales, shall not be considered common elements and shall remain the property of the Owner. The Owner also reserves the right to bring prospective purchasers through all recreational facilities until such time as all the condominium units constructed or to be constructed by the Owner on the land identified by Exhibit 3 hereto, have been sold and conveyed.
- 15.2 Each unit owner acknowledges that the Owner's right to construct additional condominiums in the complex and to use the common elements of the condominium to be constructed is a part of the consideration for the sale and purchase of his condominium unit and has been taken into consideration in fixing the purchase price of each unit. Each unit owner acknowledges that the inclusion of additional units in the complex shall be deemed to not materially affect the rights of the unit owners or the value of the unit, even though the full number of units to be constructed therein is unknown at the time of closing the transaction of sale and purchase of his condominium unit.
- 15.3 So long as the Owner shall own any unit, the Owner shall have the absolute right to lease, sell, transfer and/or convey any such unit to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interest.
- 15.4 So long as 5 percent or more completed units are unsold, Owner, or its successor, shall be entitled to cast one vote in the Condominium Association for each unit which has been certified for occupancy.
- 15.5 All present or future owners, tenants or other persons who might use the facilities of this condominium in any manner, are subject to the provisions of this Declaration and all documents appurtenant hereto, and incorporated herewith, and the mere acquisition or rental of any unit, or the mere acts of occupancy of any unit shall signify that the provisions of this Declaration, and such documents are accepted and ratified in all respects.
- 15.6 The Owner reserves the right to amend this Declaration of Condominium to cure deficiencies due to technical errors or omissions without consent of unit owners or the Association. The Owner also reserves the right to modify and/or correct the plot plans by amendments to reflect "as built" conditions at any time without consent of unit owners or the Association.
- 15.7 The Owner reserves the right to change the interior design or arrangement of all units so long as the Owner owns the units so changed and altered, and provided such change shall be reflected by an amendment of this Declaration. Any amendment for such purpose need be signed and acknowledged only by the Owner and the mortgagee of said units, if any, and need not be approved by the Association or unit owners, anything herein to the contrary notwithstanding.
- 15.8 The Owner reserves the right to amend this Declaration to materially change the configuration or size of any unit in any fashion, materially alter or modify the appurtenances to a unit, or materially change the proportion or percentage by which the owner of the condominium parcel shares the common expenses and owns the common surplus of the condominium.

16. Insurance Provisions

- 16.1 The following insurance coverage shall be maintained in full force and effect by the Association to cover this condominium, covering the units, common elements, limited common elements, and Association property:
- 16.1.1 Casualty insurance covering all of the units, common elements, limited common elements, and property to which the Association holds title in an amount equal to the maximum insurance

replacement value thereof, exclusive of excavation and foundation costs, as determined annually by the Association, such coverage to afford protection against the following matters:

- 16.1.1.1 Loss or damage by fire or other hazards covered by the standard extended coverage and other perils covered by the standard extended coverage including windstorm endorsement; and
- 16.1.1.2 Such other risks of a smaller or dissimilar nature as are or shall be customarily covered with respect to buildings similar in construction, location, and use to the condominium, including vandalism, malicious mischief, and such other insurance coverages as, and to the extent available, may from time to time be deemed by the Board of Directors of the Association to be necessary and proper and in the best interests of the Association and the unit owners therein.
- 16.1.2 Public liability and property damage insurance in such amounts and in such form as shall be required by the Association and the owners of all units, including such insurance coverages as, to the extent available, may from time to time be deemed by the Board of Directors of the Association to be necessary and proper and in the best interests of the Association and the unit owners therein; and Workman's Compensation insurance as required by law.
- 16.1.3 Such other insurance coverage, other than title insurance, as the Board of Directors of the Association in its sole discretion, may determine from time to time to be in the best interests of the Association and the owners of all of the units.
- 16.2 All liability insurance maintained by the Association shall contain cross-liability endorsements to cover liability of all owners of units as a group to each unit owner. All insurance coverage authorized to be purchased shall be purchased by the Association for itself and for the benefit of all of the owners of all units in the condominium as they shall exist from time to time. The cost of obtaining the insurance coverage authorized above is declared to be common expense, as are any other fees and expenses incurred which may be necessary or incidental to carry out the provisions hereof. All policies of casualty insurance covering the condominium shall provide that the insurance proceeds covering any loss be payable to the Insurance Trustee named as hereinafter provided, or to its successor, and the insurance proceeds from any casualty loss shall be held for the use and benefit of the Association and all of the owners of all units, and their respective mortgagees, as their interests may appear, and such insurance proceeds shall be applied or distributed in the manner herein provided. The Association is hereby declared to be and appointed as the Authorized Agent for all of the owners of all units for purposes of negotiating and agreeing to a settlement as to the value and extent of any loss which may be covered under any policy of insurance, and is granted full right and authority to execute in favor of any issuer a release of liability arising out of any occurrence covered by any policy or policies of insurance and resulting in loss of or damage to insured property. The company or companies with which casualty insurance may be placed shall be selected by the Association, and all parties beneficially interested in such insurance coverage shall be bound by such selection of insurance company or companies made by the Association.
- 16.3 The Association shall have the right to designate the Insurance Trustee, and all parties beneficially interested in such insurance shall be bound thereby. The Insurance Trustee shall be a banking institution doing business in the State of Florida. The Insurance Trustee shall not be liable for the payment of premiums, the renewal of any policy or policies of casualty insurance, the sufficiency of coverage, the form or content of the policies, or the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds of casualty insurance as are paid and to hold same for the purposes herein stated, and for the benefit of the Association and the owners of all units, and the respective mortgagees, such insurance proceeds to be disbursed and paid by the Trustee as hereinafter provided. The Association, as a common expense, shall pay a reasonable fee to said Trustee for its services rendered hereunder, and shall pay such costs and

expenses as said Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Trustee. Whenever the Trustee may be required to make distribution of insurance proceeds to owners of units and their mortgagees, as their respective interests may appear, the Trustee may rely upon a Certificate of the President and Secretary of the Association, executed under oath, which Certificate will be provided to said Trustee upon request of said Trustee made to the Association, such Certificate to certify unto said Trustee the name or names of the owners of each unit, the name or names of the mortgagee or mortgagees who may hold a mortgage or mortgages encumbering each unit or units, and his or their respective mortgagees, as their respective interests may appear. Where any insurance proceeds are paid to the Trustee for any casualty loss, the holder or holders of any mortgage or mortgages encumbering a unit shall not have the right to determine or participate in the determination of repair or replacement of any loss or damage, and shall not have the right to elect to apply insurance proceeds to the reduction of any mortgage or mortgages, unless such insurance proceeds represent a distribution to the owner or owners of any unit or units, and their respective mortgagees, after such insurance proceeds have been first applied to repair, replacement or reconstruction of any loss or damage, or unless such casualty or insurance proceeds are authorized to be distributed to the owner or owners of any unit or units and their respective mortgagee or mortgagees by reason of loss of or damage to personal property constituting a part of common elements and as to which a determination is made not to repair, replace or restore such personal property.

16.4 In the event of loss or damage only to common elements, real or personal, and/or limited common elements, which loss or damage is covered by casualty insurance, the proceeds paid to the Trustee to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such common elements, and/or limited common elements, then such excess insurance proceeds shall be paid by the Trustee to the owners of all of the units and their respective mortgagees, irrespective of whether there may be exclusive right to use an area constituting a limited common element appurtenant to any of such units, the distribution to be separately made to the owner of each unit and his respective mortgagee or mortgagees as their interests may appear, by using the same fractional basis outlined in Article 5, which would make each distribution of insurance proceeds bear the same ratio to the total distribution of insurance proceeds as each regular assessment bears to the total regular assessment. If it appears that the insurance proceeds covering the casualty loss or damage payable to the Trustee are not sufficient to pay for repairs, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Association shall deposit with the Trustee a sum which, together with the insurance proceeds received or to be received, will enable said Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage as the case may be. The moneys to be deposited by the Association with the Trustee, in said latter event, may be paid by the Association out of its Reserve for Replacement Fund, and if the amount in such Reserve for Replacement Fund is not sufficient, the Association shall levy and collect an assessment against the owners of all units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction without regard to the existence of any exclusive right to use any area constituting limited common elements, which may be an appurtenance to said units.

16.5 In the event of the loss or damage to common elements, limited common elements, and any unit or units, which loss or damage is covered by the casualty insurance, the proceeds paid to the Trustee to cover such loss or damage shall be first applied to the repair, replacement or reconstruction, as the case may be, of common elements, real or personal, and limited common elements, and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any unit or units which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the common elements, and limited common elements and the unit or units sustaining any loss or damage, then such excess insurance proceeds shall be

paid and distributed by the Trustee to the owners of all units and to their mortgagee or mortgagees, as their respective interest may appear, such distribution to be made in the manner and in the proportions as are provided hereinbefore. If it appears that the insurance proceeds covering the casualty loss or damage payable to the Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Board of Directors of the Association shall, based upon reliable and detailed estimates obtained by it from competent and qualified parties determine and allocate the cost of repair, replacement or reconstruction between the common elements, and limited common elements and the unit or units sustaining any loss or damage. If the proceeds of said casualty insurance are sufficient to pay for the repair, replacement or reconstruction of any loss or damage to common elements and limited common elements, but should the same not be sufficient to repair, replace or reconstruct any loss of or damage to any unit or units, then the Association shall levy and collect an assessment from the owner or owners of the unit or units sustaining any loss or damage, and the assessments so collected from the said owner or owners shall be deposited with said Trustee so that the sum on deposit with said Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all common elements, limited common elements and unit or units. In said latter event, the assessment to be levied and collected from the owner or owners of each unit or units sustaining loss or damage shall be apportioned between such owner or owners in such manner that the assessment levied against each owner of a unit and his unit shall bear the same proportion to the total assessment levied against all of said owners of units sustaining loss or damage as does the cost of repair, replacement or reconstruction of each owner's unit bear to the cost applicable to all of said units sustaining loss or damage. If the casualty insurance proceeds payable to the Trustee in the event of the loss or damage to common elements, limited common elements and unit or units, is not an amount which will pay for the complete repair, replacement or reconstruction of the common elements and limited common elements, it being recognized that such insurance proceeds are to be first applied to payment for repair, replacement or reconstruction of said common elements and limited common elements before being applied to the repair, replacement or reconstruction of a unit or units, then the cost to repair, replace or reconstruct said common elements and limited common elements in excess of available casualty insurance proceeds shall be levied and collected as an assessment from all of the owners of all units in the same manner as would such assessment be levied and collected had the loss or damage sustained been solely to common elements and limited common elements, and the casualty insurance proceeds had not been sufficient to repair, replace and reconstruct such common elements and limited common elements; and the cost to repair, replace or reconstruct said unit or units sustaining loss or damage shall then be levied and collected by assessment of the owner or owners of a unit or of units sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between the owner or owners of a unit or units sustaining such loss or damage. In said latter event, assessment of the owner or owners of unit or units shall be made without regard to existence of any exclusive right to use an area constituting limited common elements which may be an appurtenance to any unit.

- 16.6 In the event of loss of or damage to property covered by such casualty insurance, the Association shall, within sixty days after any such occurrence, obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before such loss or damage, such estimates to contain and include the cost of any professional fees and premiums for such Bond as the Board of Directors of the Association may deem to be in the best interests of the membership of said Association. Wherever it shall appear that insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of the repair, replacement or reconstruction thereof, the additional monies required to completely pay for such repair, replacement or reconstruction of said loss or damage, whether to be paid by all of the owners of the units or only by the owner or owners of any unit or units sustaining loss or damage, or both, shall be deposited with said Trustee not later than thirty days from the date on which said Trustee shall receive the monies payable under the policy or policies of casualty insurance.

- 16.7 In the event of the loss of or damage to personal property belonging to the Association, the insurance proceeds, when received by the Trustee, shall be paid to the Association. In the event of the loss of or damage to personal property constituting a portion of the common elements or, and should the Board of Directors of the Association determine not to replace such personal property as may be lost or damaged, then the insurance proceeds received by the Trustee shall be paid to all of the owners of all units and their respective mortgagee and mortgagees as their respective interests may appear, in the manner and in the proportions hereinbefore provided for the distribution of the excess insurance proceeds.
- 16.8 Notwithstanding anything herein contained, should any claim, or the proceeds of any settlement of an insurance claim, be less than TEN THOUSAND DOLLARS, then such sum need not be deposited with the Trustee, but rather shall be paid directly to the Association to be distributed in accordance with the terms of this Article.
- 16.9 Notwithstanding anything herein contained, every unit owner in the Condominium shall carry personal property and liability insurance for his contents and interior activities in the unit in the form of a condominium owner's policy.

17. Amendment

This section shall not apply to amendments by the Owner set forth in Sections 15.6, 15.7, and 15.8 hereof and as provided for in the Florida Condominium Act.

Except for any alteration in the percentage of ownership in the common elements appurtenant to each unit or alteration of the basis for apportionment of common expense assessments for the condominium as a whole, (which may be levied by the Association in accordance with the provisions hereof), in which said instances consent of all the owners of all units and their respective mortgagees in the condominium shall be required, or, alteration of the basis for apportionment of expenses attributable to the Property Owners' Association, in which instance consent of all the owners of all the units and their respective mortgagees in this condominium shall be required, this Declaration may be amended in the following manner:

- 17.1 An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of two-thirds of the Directors or by two-thirds of the members of the Association, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or some other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association to occur on a date not sooner than ten days nor later than thirty days from receipt by the officer of the proposed amendment or amendments.
- 17.2 The Secretary shall give each member written notice of such Special Meeting indicating the time and place thereof and the proposed amendment or amendments. The proposed amendment or amendments shall be in a form sufficient to apprise the members of the subject matter thereof. The Secretary shall personally deliver or mail the notice not less than five days nor more than fifteen days before the date set forth for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, postage pre-paid, and addressed to the member at his post office address as it appears in the records of the Association.
- 17.3 The amendment or amendments proposed must be approved by not less than seventy-five percent of the members of the Association either by an affirmative vote at the meeting or by an instrument in writing signed by them in order for such amendment or amendments to become effective. After adoption, such amendment or amendments of this Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted, and the amendment or amendments, executed with the same formalities as a Deed, shall be recorded in the Public Records of St. Johns County, Florida, within ten days from the date on which the same become effective. Thereafter, a copy thereof, in the form in which

the same was placed of record, shall be delivered to each of the members of the Association but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. The amendment or amendments shall specifically refer to the recording data identifying the book and page where the Declaration is recorded. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting. No amendment to this Declaration shall be effective which would operate to affect the validity or priority of any mortgage held by a mortgagee upon any unit in this condominium, or which would alter, amend or modify, in any manner whatsoever, the rights, powers, and privileges granted and reserved herein in favor of any mortgagees or in favor of the Owner, unless the consent of all such mortgagees and the Owner is given in writing to the Association. No amendment to this Declaration shall be effective that is in conflict with any rule or regulation of any federal agency financing, guaranteeing, or insuring mortgages, upon units in this condominium without the governmental agency's prior written approval, obtained in recordable form.

18. Remedies for Violations

For violation or breach of any provisions of this Declaration, the By-Laws or the Rules and Regulations adopted pursuant thereto, the Association, the unit owners, an institutional first mortgagee, or any of them, jointly or severally, may sue to recover damages, to compel compliance with the terms violated, to prevent the violation of any of the provisions, or to obtain such other relief as may be appropriate. The failure to enforce promptly any of the provisions of this Declaration shall not bar their subsequent enforcement.

19. Termination

The condominium shall be terminated, if at all, in the following manner:

- 19.1 The termination of the condominium may be effected by the agreement of unit owners, who in the aggregate own not less than 95 percent of the units in existence in the condominium, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyances of land, providing that all the holders of institutional mortgages on all the units in the condominium must also consent thereto by joining the instrument or instruments. The termination shall become effective when such agreement has been recorded in the Public Records of St. Johns County, Florida.
- 19.2 Destruction: If it is determined in the manner elsewhere provided that the property shall not be reconstructed after casualty, this condominium plan of ownership will be terminated and all Declarations revoked. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of St. Johns County, Florida.
- 19.3 Shares of Unit Owners after Termination: After termination of the Condominium, the unit owners shall own the property formerly in the condominium as tenants in common in undivided shares. The holders of mortgages and liens against the units formerly owned by such unit owners shall have mortgages and liens upon the respective undivided shares of the unit owners. Such undivided shares of the unit owners shall be as set forth in Article 5, subject to the conditions of Paragraph 19.6. The cost incurred by the Association in connection with a termination shall be a common expense.
- 19.4 Following termination, the property may be partitioned and sold upon the application of any unit owner. If the Board of Directors, following a termination, by not less than a three-fourths vote, determines to accept an offer for sale of the property as a whole, each unit owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs. In such event, any action for partition or other division of the property shall be

held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

19.5 The members of the Board of Directors acting collectively as agent for all unit owners, shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

19.6 Each unit owner, for himself and his successors in interest, covenants and agrees with each other unit owner, that upon sale of amenities such as walkways, greenbelts, swimming pools and other recreation areas, if any, after termination of the Condominium, the proceeds therefrom shall be calculated and shall be disbursed by the Association to each unit owner in proportionate shares as set forth by the fractional basis of Article 5. The intent of this paragraph is to allow fair treatment to each unit owner and between unit owners with respect to those amenities so that each unit owner shall share proportionately with each other unit owner, not only in the expenses of those amenities, but also in the proceeds of the sale of those amenities.

20. Interpretation

When the context requires, the use of any gender shall be deemed to include all genders and the use of any number shall include the singular and plural. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. If any of the provisions of this Declaration, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Florida, then, the laws shall be deemed controlling and the validity of the remainder of this Declaration and the application of any such provisions, section, sentence, clause, phrase or word in other circumstances shall not be deemed affected thereby.

This Declaration of Condominium was executed by the duly authorized officers of Sun-Mark II Associates, the joint venture partners, Calmark Communities, Inc. and Sunshine State Mortgage Company on this _____ day of _____, 1985.

SUN-MARK II ASSOCIATES, a Joint Venture

Witnesses:

By:

Calmark Communities, Inc.

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this _____ day of _____, 1985 by _____, who is the _____ of Calmark Communities, Inc., on behalf of the corporation.

Notary Public
My Commission Expires:

SUN-MARK II ASSOCIATES, a Joint
Venture

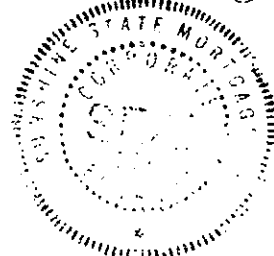
Witnesses:

Annita Powell

William L. Parker

By:

William L. Parker
Sunshine State Mortgage Company



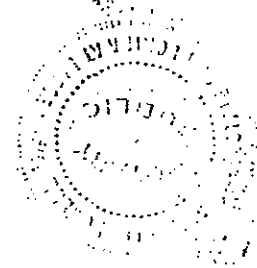
STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this _____ day
of _____, 1985 by William L. Parker, who is
the EXECUTIVE VICE PRESIDENT of Sunshine State Mortgage Company, on behalf of
the corporation.

William L. Parker
Notary Public

My Commission Expires: 11-16-86



A CONDOMINIUM - PROPOSED

A Portion of Section 15, Township 8 South, Range 30 East, St. Johns County, Florida

[illegible]

A petrel's nest lying in Government Lot 4, in Fort St. Vrain, is shown. It is a small, shallow, cup-shaped nest, made of twigs, sticks and debris, and is situated in a grassy area.

[illegible]

Containing 9.28 acres more or less.

states that property upon which the roadway, "Palm In" area, and localities serving the Ocala, Galtburg Villages and, Pineda to the extent those parking areas, feedways, and interstates (a), within the above description, names upon which the parking areas, roadways, and feedways are constructed are not included in the lands dedicated to condominium ownership, and all rights, title, and interest in this property will remain vested in the Smart, Swartzell & Associates, until such time as they convey or transfer it to the Ocala Galtburg Properties, Inc. or its successors.

[illegible]

SECRET

SHEET NO.	TITLE
1	DESCRIPTION, CENT LOCATION
2	SITE PLAN - BUILDING LOCATIONS
3 & 4	BUILDING FLOOR PLANS
5, 6, 7	UNIT FLOOR PLANS
8, 9, 10	ELEVATIONS

PREPARED BY
CUMBEY & FAIR
2045 E. 18th St.
Chicago, Ill. 60640
CUMBEY & FAIR

description:

THE OCEAN GALLERY

A parcel of land in Government Lots 1 and 4 in Section 15, Township 8 South, Range 20 East, St. Johns County, Florida, being further described as follows:

Beginning at a point of intersection of the East right-of-way line of State Road No. A-1-A, said right-of-way line being 50 feet East of the centerline of said road, with a line 300 feet North of and parallel with the South line of said Government Lot 4, said point also lying on a curve concave Southwesterly and having a radius of 11,509.20 feet (a radial to said curve bears N. 75°41'50" E.); thence Northwesterly along said curve 133.36 feet through a central angle of 00°39'50"; thence tangent N. 14°58'00" W., 1136.64 feet; thence N. 89°24'30" E., 1596 feet more or less to the mean high water line of the Atlantic Ocean; thence Southerly along said mean high water line, 1289 feet more or less to its intersection with a line which bears, N. 89°24'30" E. from the "TRUE POINT OF BEGINNING"; thence S. 89°24'30" W., 1403 feet more or less to the "TRUE POINT OF BEGINNING".

Containing 44.1 acres more or less

Together with any littoral rights thereunto appertaining.