

DECLARATION OF CONDOMINIUM,
RESTRICTIONS, RESERVATIONS,
COVENANTS, CONDITIONS AND EASEMENTS
OF
ORMOND-BY-THE-SEA CLUB
A CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM, Restrictions, reservations, covenants, conditions and easements, made this 14th day of July, 1970, by W. M. SANDERLIN, as Trustee, herein- after called the "Developer", for himself, his successors, grantees and assigns, to his grantees and assigns, and their heirs, successors and assigns.

W I T N E S S E T H:

THAT WHEREAS, the Developer is the owner of the following described real property located in Volusia County, Florida, to-wit:

The North 175 feet of Lot 8 and the South 175 feet of Lot 9 as lies Easterly of Ocean Shore Boulevard, OAKDALE PARK SUBDIVISION #2, according to map in Map Book 7, page 101, together with any and all shore rights appertaining thereto, Public Records of Volusia County, Florida.

The Developer has had the above described property surveyed and divided into thirty-one Garden and Townhouse living units numbered 101 through 109, inclusive, 210 through 227, inclusive, and 428 through 431, inclusive. The remaining part of the above described lands which is not within any living unit shall be known as Lot "X", and shall be the "common property" or "common elements", and

WHEREAS, the Developer desires to submit the above described real property and the improvements to be constructed thereon to condominium ownership and use pursuant to Chapter 711, Florida Statutes 1969, hereinafter called "The Condominium Act"; and

WHEREAS, all the restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall rule perpetually unless terminated as provided herein and shall be binding upon all parties or persons subsequently owning property in said condominium, and in consideration of

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receiving and by acceptance of a conveyance, grant devise, lease or mortgage, all grantees, devisees, lessees, and assigns, and all parties claiming by, through or under such persons, agree to be bound by all the provisions hereof except, however, if Developer shall convey all of the property designated as Ormond by the Sea Club, a condominium, to a corporate grantee, then and in any such event, said immediate grantee shall be considered as Developer herein for all intents and purposes. Both the burdens imposed and the benefits shall run with each Unit and the interests in Common Property as herein defined.

NOW, THEREFORE, the said W. M. SANDERLIN, as Trustee, and individually, joined by his spouse, JACQUELINE SANDERLIN, hereby makes the following declarations, restrictions, reservations, covenants, conditions and easements:

1. That certain real property located in Volusia County, Florida, described above, together with the improvements to be constructed thereon, is hereby submitted to condominium ownership and use.
2. The name by which the Condominium is to be identified shall be, ORMOND-BY-THE-SEA CLUB, A CONDOMINIUM.
3. The terms used in this Declaration and in the Exhibits thereto shall have the meanings stated in Section 711.03 Florida Statutes 1969, and as follows:

A) "Association" shall mean ORMOND-BY-THE-SEA ASSOCIATION, INC., a corporation not for profit organized under the laws of the State of Florida, and its successors.

B) "Common expenses" shall include:

(1) (a) Expenses of Administration:

(b) Expenses of maintenance, operation, repair or replacement of the common elements and any portions of the units to be maintained by the Association:

(c) Expenses of maintaining and operating any other property or improvements in which the Association owns an interest and which property or improvements are reasonably related to the operation of the Condominium: and

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(d) Reasonable reserves for replacement of the items set forth in subparagraphs (b) and (c) of this paragraph 3.B) (I) .

(2) Expenses declared to be common expenses by the provisions of this Declaration or by the Bylaws of the Association.

(3) Any valid charge against the Condominium property as a whole.

4. The Condominium is described as follows:

A) A survey and plot plan of the land locating and showing the improvements to be constructed thereon is recorded in Map Book 29 Pages 141 to 144 inclusive.

B) The improvements shall be constructed substantially in accordance with the plans and specifications prepared by Donald R. Hampton, Architect, Winter Park, Florida, entitled "ORMOND BY THE SEA", prepared in 1970.

C) Each of the condominium units is composed of dwelling units as designated and shown on Exhibit A as recorded in Map Book 29 Pages 141 to 144 inclusive, Public Records of Volusia County, Florida, but where there is attached to the building a balcony, loggia, terrace, canopy, stairway, or other portion of the building serving only the unit being bounded, the boundary of such unit shall be deemed to exclude all of such structures and any fixtures thereon. Each unit is and shall continue to be identified by number as shown on said Exhibit A so that no unit bears the same designation as does any other unit. Notwithstanding the actual location of the walls, ceilings and floors, each unit consists of the space bounded by the vertical projections of the unit boundary lines as shown on said Exhibit A between the horizontal planes at the floor and ceiling elevations also as shown on said Exhibit A. All property included in this condominium which is not within any living unit shall be deemed Common Property or Common Elements, and has been designated as Lot "X", and here- after the term "Common Property" or "Common Elements" shall include and be synonymous with Lot "X".

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D) The common elements shall include the land and all other parts of the Condominium not included within the unit:

5. Developer reserves the right to change the inter design and arrangement of all units, and to alter the boundaries between units, provided Developer owns the units so altered and provided further that prior written consent is obtained from , mortgagees holding a mortgage affecting the units being so al An amendment to this Declaration reflecting such alteration by Developer need be signed and acknowledged only by the Developer after such written consent, and need not be signed by the Association unit owners, lienors, or mortgagees. No such change shall, hi increase the number of units nor alter the boundaries of the I elements without an amendment to this Declaration in the manner hereinafter provided.

6. Such easements are reserved throughout the Condominium property as may be required for utility services needed to serve the Condominium adequately; provided, however, such easements through the unit shall be only in accordance with the plans and specifications for the building containing said unit, or as the building is actually constructed, unless approved in writing by the unit and mortgagees of record. All owners of units shall have as appurtenance to their units a perpetual easement for ingress egress from their units over stairs, terraces, balconies, walks and other Common Property from and to the public highways bounding ORMOND-BY-THE-SEA CLUB, a condominium, and a perpetual right easement, in common with all persons owning an interest in an unit in ORMOND-BY-THE-SEA CLUB, a condominium to the use and enjoyment of all public portions of buildings and to other common facilities (including but not limited to utilities as they now exist) located in the Common Property.

All property covered by the exhibits hereto shall be subject to a perpetual easement for encroachments which now exist

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or hereafter exist caused by settlement or movement of the building and encroachments shall be permitted to remain undisturbed and such easements shall continue until such encroachment no longer exists.

All units and the Common Property shall be subject to a perpetual easement in gross being granted to ORMOND-BY-THE-SEA ASSOCIATION, INC., and its successors for ingress and egress for the purposes of having its employees and agents perform all obligations and duties of the corporation set forth herein.

7. The owner of each unit shall own a share and certain interests in the common elements, which share and interests are appurtenant to his unit, including the following items:

A) An undivided 1/31st share in the common elements and in the common surplus.

B) Membership in the Association and an undivided 1/31st share in the funds and assets proportionately held by the Association.

C) The common elements include parking spaces for automobiles of the unit owners and their guests. Parking spaces will not be assigned, but will be available for use pursuant to the regulations of the Association; provided, however, that in no event shall said regulations provide less than one parking space per unit.

8. Each unit owner shall be liable for a proportionate share of the common expenses, such share being the same as the undivided share in the common elements and common surplus appurtenant to his unit.

9. The operation of the Condominium shall be by ORMOND-BY-THE-SEA ASSOCIATION, INC., a corporation not for profit organized under the laws of the State of Florida, which shall fulfill its functions pursuant to the following provisions:

A) A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit B, and by this reference made a part hereof.

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B) The Bylaws of the Association shall be the Bylaws of the Condominium. A copy of said Bylaws is attached hereto as Exhibit C and by this reference made a part thereof.

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

D) There shall be a total of thirty-one votes to be cast by the owners of the Condominium units. Such votes shall be apportioned and cast as follows: The owner of each condominium unit (designated as such on the exhibits

attached to this Declaration) shall be entitled to cast one (1) vote. Where a condominium unit is owned by the managing non-profit corporation, no vote shall be allowed for such condominium unit. Where a condominium unit is owned by more than one person, all the owners thereof shall be collectively entitled to the vote assigned to such unit and such owners shall, in writing, designate an individual who shall be entitled to cast the vote on behalf of the owners of such condominium unit of which he is a part until such authorization shall have been changed in writing. The term, "owner", as used herein, shall be deemed to include the Developer.

E) All the affairs, policies, regulations and property of the Association shall be controlled and governed by the Board of Directors of the Association consisting of seven (7) members, who are all to be elected annually by the members entitled to vote. Each director shall be the owner of a condominium unit (or partial owner of a condominium where such unit is owned by more than one individual) , (or if a unit is owned by a corporation, any duly elected officer or officers of an owner corporation may be elected a director or directors).

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F) Notwithstanding the duties 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 other unit owners or persons.

G) A member's share in the funds and assets held by the Association may not be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

10. Responsibility for the maintenance of the Condominium property, and restrictions upon its alteration and/or improvement, shall be as follows:

A) Units

(1) The Association shall maintain, repair and replace, at the Association's expense, all portions of a unit, except interior surfaces, contributing to the support of the building containing said unit, which portions shall include, but not be limited to the outside walls of the building and all fixtures on its exterior, boundary walls of the unit, floor and ceiling slabs, load-bearing columns and load-bearing walls, all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portions of the unit maintained by the Association, and all such facilities contained within the unit which service a part or parts of the Condominium other than the unit within which contained. All incidental damage caused to a unit by such work shall be repaired promptly at the expense of the Association.

(2) A unit owner shall maintain, repair and replace at his expense, all portions of his unit except the portions to be maintained, repaired and replaced by the Association. Such work shall be accomplished without interference with the rights of other unit owners and mortgagees of record. No unit owner or resident of the condominium shall paint, decorate or otherwise change the appearance of any portion of the exterior of any building without the written consent of the Association and consent of the mortgagees of record. Each unit owner shall promptly report to the Association any defect or need for repairs for which the Association is responsible.

(3) Except as hereinbefore reserved to Developer, no alteration or addition shall be made to any portion of a unit or building which is to be maintained and repaired by the Association, without first obtaining the written approval of all owners whose units are to be affected and the approval of the Board of Directors of the Association. A copy of plans for any such alteration or addition prepared by an architect licensed to practice in the

State of Florida shall be filed with the Association prior to commencement of the work.

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B) Common Elements.

(1) The maintenance and operation of the common elements and any other property or improvements in which the Association owns an interest shall be the responsibility of the Association.

(2) After completion of the improvements included in the common elements contemplated by this Declaration and the Exhibits hereto, there shall be no alteration or further improvement of said common elements without prior written approval of the owners of not less than fifty per cent (50%) of the common elements. No such alteration or improvement shall interfere with the rights of any unit owner without his consent. No assessment for the cost of any such work shall be levied against any institutional investor which acquires title as a result of owning a mortgage upon a Condominium parcel, regardless of whether title is acquired by deed from the mortgagor or through foreclosure proceedings, unless such owner shall approve the alteration or improvement in writing. The portion 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 the total common elements less the part owned by the institutional investor or investors.

To facilitate and carry out the obligations of the Association for maintenance, repair and replacement as set forth in this Paragraph 10, there is reserved unto the Association the right to enter in and upon any unit at any reasonable time.

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

A) The Board of Directors of the Association shall approve annual budgets in advance for each fiscal year and the budgets shall project anticipated income and estimated expenses in sufficient detail to show separate estimates for insurance for fire and extended coverage, vandalism and malicious mischief, for the units and the Common Property, and public liability insurance for the Common Property, operating expenses, maintenance expenses, repairs, utilities, replacement reserve, if any, and reasonable operating reserve for the Common Property. Failure of the Board to include any item in the annual budget shall not preclude the Board from levying an additional assessment in any calendar year for which the budget has been projected.

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B) The portion of the total regular annual assessment for each fiscal year assessed against each unit (and the interest in Lot "X" appurtenant thereto), and all members owning an interest in each unit, (except there shall be no assessment against a unit owned by the Association which is being used or to be used as the Condominium Manager's unit) shall be .03226.

C) After adoption of a budget and determination of the annual assessment per unit, the Association shall assess such sum by promptly notifying all owners by delivering or mailing notice thereof to the voting Member representing each unit at such member's most recent address as shown by the books and records of the Association. One-twelfth (1/12th) 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 thereof. In addition, the Association shall have the power to levy special assessments against each unit, if necessary, to cover special expenses and shall have the power to levy other special assessments as provided herein which shall be on a percentage basis as hereinabove provided.

D) The record owners of each unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments,

regular or special, made by the Association and for all costs of collection of delinquent assessments. In the event assessments against a unit are not paid within sixty (60) days after their due date, ORMOND-BY-THE-SEA ASSOCIATION, INC. may elect to declare all past due installments of maintenance and all installments to become due during the remainder of such fiscal year then due and payable in full, as if such aggregate sum had originally been stipulated to so become due and payable in full, and the Association shall have the right to foreclose its lien for such assessments.

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E) Assessments that are unpaid for over thirty (30) days after due date shall bear interest at the rate of ten percent (10%) per annum until paid.

F) The Association shall have a lien on each condominium parcel (the term "Condominium Parcel" shall include the condominium unit and the interest in the common elements) for any unpaid assessments and interest thereon which has been assessed against unit owner of such condominium parcel. The said lien shall be effective from and after the time of recording in the public records of Volusia County, Florida, of a claim of lien stating the description of the condominium parcel, the name of the record owner, the amount due and the date when due, and the said lien shall continue in effect until all sums secured by the lien shall have been fully paid. All such claims of lien shall be signed and verified by an Officer or agent of the Association. Where any such lien shall have been paid in full, the party making payment thereof shall be entitled to receive a satisfaction of such lien in such form that it may be recorded in the public records of Volusia County, Florida. Any, all such liens herein provided for shall be subordinate to the lien of a mortgage or other lien recorded prior to the time of recording of the claim of lien. The Board of Directors may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien and may settle and compromise the same if in the best interests of the Association. The delinquent owner shall pay all costs, including reasonable attorneys' fees, for filing any action or suit enforcing and foreclosing a lien, and the lien shall be deemed to cover and secure such costs and fees. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien and to apply as credit against said bid all sums due the Association which are covered by the lien enforced. In the event any legal proceedings are instituted to foreclose a lien for assessments, the Association upon bringing such proceedings shall be entitled as a matter of right to the appointment of a receiver, who shall be entitled immediately to take possession of said unit under the supervision of the Court conducting

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the foreclosure proceeding, and in the event the receiver allows the owner of the unit to remain on the subject property, the owner shall pay a reasonable rental for the unit to the receiver for the benefit of the Association and the owner, said rental to be applied first to the payment of delinquent assessment, Court costs, attorneys' fees and to any mortgagee of record to the extent deemed necessary to cure any delinquency or default, and any other fees, and then to the owner.

G) As to priority between the lien of a recorded mortgage and the lien for any assessment, the lien for an assessment shall be subordinate and inferior to any recorded institutional first mortgage, regardless when said assessment was due, but not to any other mortgage. For the purpose of this instrument, an "institutional first mortgage" shall be defined as a first mortgage originally executed and delivered to a bank, savings and loan association or insurance company authorized to transact business in the State of Florida. Upon the recordation of the Certificate of title issued pursuant to the foreclosure of an institutional first mortgage, any lien for assessments due and payable prior to such recordation shall be deemed abolished, but the lien for

assessments due and payable after the recordation of said Certificate shall not be impaired and shall be effective as to the grantee of such Certificate of Title.

H) Any person who acquires an interest in a unit, except an institutional first mortgagee, shall be personally liable and jointly and severally liable with the grantor, for all unpaid assessments up to the time of the transfer of ownership. In the event a member exercises his rights of first refusal or redemption, hereinafter provided, said member shall be liable for the unpaid assessments against the unit and shall have the right to deduct such sums from the First refusal or redemption price paid to the seller or transferor.

I) Any person purchasing or encumbering a unit shall

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

J) The Association may at any time require owners to maintain a minimum balance on deposit with the Association to cover future assessments. Said deposit shall be uniform and shall in no event exceed six (6) months' assessment.

K) Anything in this Declaration, or the exhibits attached hereto, to the contrary notwithstanding, the provisions of said Declaration and exhibits attached hereto shall not become applicable, effective or binding insofar as the management of the condominium or the levying of assessments is concerned, until actual management of the condominium project is delivered and turned over by the Developer to the non-profit corporation mentioned hereinabove which shall not be later than October 1, 1971; except however, if (a) said date the Developer has not deeded to individual purchasers more than eighty percent (80%) of the condominium parcels he may, at his option, continue to manage the condominium project until such percentage of condominium parcels have been deeded to individual purchasers. While the Developer shall retain management of the condominium project, he shall collect all assessments, the same being payable to the Developer during this interim. During this interim the Developer will not be liable for any accounting of any nature concerning these maintenance funds or their use or application and may use any portion of the same for capital improvements, so long as said improvements are to the condominium project. The Developer shall, during this interim, have a lien on each condominium parcel for any unpaid assessments and interest thereon, against the unit owner and condominium parcel and have the same remedies of personal action and/or foreclosure of said lien to perfect collection.

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12. The use of the Condominium property and other property and improvements in which the Association owns an interest shall in accordance with the following provisions so long as the Condominium exists and the buildings containing the Condominium units remain in useful condition upon the land:

A) Each of the units shall be occupied only by a single family, its servants and guests, as a residence and for no other purpose. Except as hereinbefore reserved to Developer, no unit may be divided or subdivided into a smaller unit, nor any portion thereof sold or otherwise transferred without first amending this Declaration as hereinabove provided to show the changes to be effected in the units. Any undivided interest in the Common Property is hereby declared to be appurtenant to each unit and such undivided interest shall be conveyed, devised, encumbered or otherwise included with the unit even though