

DECLARATION OF CONDOMINIUM

OCEAN BEACH CONDOMINIUM CLUB I

Ocean Highway A-1-A South
Flagler Beach, Florida

MADE this November 1, 1972 by JOHN LEDBETTER,
individually and as Trustee, under the provisions of a certain
Trust Agreement, dated October 15, 1972 joined by
his wife, JOYCE H. LEDBETTER, called the Developer, for them-
selves, their successors, grantees and assigns.

WHEREIN the Developer makes the following declarations;

1. Purpose. The purpose of this Declaration is to submit
the lands described in this instrument and improvements on such
lands to the condominium form of ownership and use in the manner
provided by Chapter 711, Florida Statutes 1969, hereafter called
The Condominium Act.

1.1. Name and Address. The name by which this condominium
is to be identified is OCEAN BEACH CONDOMINIUM CLUB I, a condomi-
nium, and its address is Ocean Highway A-1-A South, Flagler Beach,
Florida.

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

That portion of Government Lot 1, Section 29, and that portion of Government Lot 5, Section 30, being in Township 12 South, Range 32 East, Flagler County, Florida, being described as follows:

Begin at the intersection of the Easterly line of the 50' County Road as shown on the plat of Ocean Palm Subdivision, of record in Map Book 5, Page 70, Public Records of Flagler County, Florida, with the north line of said Government Lot 5, Section 30; Thence Southerly and along said Easterly line of the County Road, a distance of 492.34' to a point; Thence Easterly and at right angles to said County Road, a distance of 250' to the Westerly line of State Road A-1-A, an 80' right of way as now laid out; Thence go Northerly along said Westerly line of State Road A-1-A, a distance of 400' more or less, to an intersection with the extension easterly of the North line of said Government Lot 5, Section 30; Thence West along said line and said North line of Government Lot 5, a distance of 265' more or less to the Point of Beginning; Together with all that land lying Easterly thereof, Easterly of State Road A-1-A, and all littoral and shore rights appertaining thereto.

DEFINITIONS

2. Definitions. The terms used in this Declaration and in its exhibits shall have the meanings stated in the Condominium Act (711.03) Florida Statutes 1969) and as follows unless the context otherwise requires:

- 2.1. Apartment means unit as defined by the Condominium Act.
- 2.2. Apartment Owner means unit owner as defined by the Condominium Act.
- 2.3. Association means THE OCEAN BEACH ASSOCIATION and its successors.
- 2.4. Common elements shall include the tangible personal property required for the maintenance and operation of the condominium, even though owned by the Association, as well as the items stated in the Condominium Act.
- 2.5 Common expenses include:
- a. Expenses of administration: expenses of maintenance, operation, repair or replacement of the common elements and of the portions or apartments to be maintained by the Association.
 - b. Any vaild charge against the condominium property as a whole.
 - c. Expenses declared common expenses by provisions of this Declaration of the Bylaws, including but not limited to losses from revenue producing operations.
- 2.6 Condominium means all of the condominium property as a whole when the context so permits, as well as the meaning stated in the Condominium Act.
- 2.7 Singular, plural gender. Whenever the context so

permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

2.8 Utility Services as used in the Condominium Act and as construed with reference to this condominium, and as used in the Declaration and By-laws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewer disposal.

DEVELOPMENT PLAN

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

3.1 A survey of the land showing the improvements on it is attached as Exhibit A, which comprises _____ sheets.

3.2 Plans. The improvements upon the land are constructed substantially in accordance with the plans and specifications for such prepared by Craig J. Gehlert, and designated as his Job No. 7219, a portion of which plans are attached in the foregoing exhibits.

3.3 Amendment of plans.

a. Alteration of apartment plans. Developer reserves the right to change the interior design and arrangement of all

units, and to alter the boundaries between the units, as long as Developer owns the units so altered. No such change shall increase the number of apartments nor alter the boundaries of the common elements without amendment of this Declaration by approval of the Association, apartment owners and owners of mortgages in the manner elsewhere provided. If Developer shall make any changes in units so authorized, such changes shall be reflected by an amendment of this Declaration. If more than one unit is concerned, the Developer shall apportion between the units the shares in the common elements appurtenant to the units concerned.

b. Amendment of Declaration. An amendment of this Declaration reflecting such authorized alteration of apartment plans by Developer need be signed and acknowledged only by the Developer and need not be approved by the Association, apartment owners or lienors or mortgagees of apartments or of the condominium, whether or not elsewhere required for an amendment.

3.4 Easements

a. Easements are reserved through the condominium property as may be required for utility services in order to serve the condominium adequately; provided, however, such easements through an apartment shall be only according to the plans and specifications for the apartment building, or as the building is constructed,

unless approved in writing by the apartment owner.

3.5 Improvements -- general description.

a. Apartment building. The condominium includes an apartment building consisting of a ground floor, and three additional floors with six (6) penthouses, making a total of four (4) floors.

b. Other Improvements.

The condominium includes gardens and landscaping, automobile parking areas and other facilities located substantially as shown upon the plans and which are part of the common elements.

3.6 Apartment boundaries. Each apartment, which term as used in this subsection concerning boundaries shall include maids' rooms, shall include that part of the building containing the apartment that lies within the boundaries of the apartment, which boundaries are as follows:

a. Upper and lower boundaries. The upper and lower boundaries of the apartment shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(1) Upper boundary -- the horizontal plane of the lower surfaces of the ceiling slab;

(2) Lower boundary -- the horizontal plane of the

lower surfaces of the floor slab.

b. Perimetrical boundaries. The perimetrical boundaries of the apartment shall be the following boundaries, extended to an intersection with the upper and lower boundaries:

(1) Exterior building walls -- the intersecting vertical planes adjacent to and which include the exterior walls of the apartment building bounding an apartment and fixtures thereon, and when there is attached to the building a balcony, loggia, terrace, canopy, stairway or other portion of the building serving only the apartment being bounded, such boundaries shall be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon. In the case of ground floor apartments, such boundaries shall include the terraces serving such apartments.

(2) Interior walls -- the vertical planes of the center line of walls bounding an apartment extended to intersections with other perimetrical boundaries with the following exceptions:

(i) When walls between apartments are of varying thickness, or abut a column or shaft, the plane of the center line of a bounding wall shall be extended to an intersection with the connecting bounding plane without regard to the

center line of an intervening column or shaft.

(ii) When walls of different thickness abut with a flush side so that their center lines do not intersect, the plane of the center line of the thinner wall shall be extended into the thicker wall for a distance which is one-half the thickness of the thinner wall, and the boundary shall thence run at a right angle to the plane of the center line of the thicker wall.

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

a. Automobile parking areas. Automobile parking will be made available to apartment owners. The Association shall have authority to make reasonable charges for the parking of automobiles in such parking area and the same will be available pursuant to the regulations of the Association.

b. Use; charges. The foregoing and all other common elements shall be available for use by all apartment owners without discrimination. Such use will be without charge except when specifically authorized by this Declaration, except that the Association when authorized by its regulations may charge for the

exclusive use of facilities from time to time if such exclusive use is made available to all apartment owners.

THE APARTMENTS

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

4.1 Apartment numbers. There are Forty-two (42) apartments in the apartment building. The apartments are numbered from _____ to _____ inclusive, beginning with No. _____ on the _____ corner.

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

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

An undivided $1/42$ nd share to each Apartment
42 such apartments = $42 \times 1/42$ -- Total 100%

b. Automobile Parking space. The common elements include parking areas for automobiles of the apartment owners. Parking areas will not be assigned but will be available for use pursuant to the regulations of the Association.

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

4.3 Liability for common expenses. Each apartment 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 appurtenant to his apartment.

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

5.1 Apartments.

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

(1) All portions of an apartment, including hallways, stairways and elevators, except interior surfaces, contributing to the support of the apartment building, which portions shall include but not be limited to loadbearing columns and loadbearing walls.

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

(3) All incidental damage caused to an apartment by such work shall be repaired promptly at the expense of the Association.

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

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

(2) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building.

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

c. Alteration and improvement. Except as elsewhere reserved to Developer, neither an apartment owner nor the Association shall make any alteration in the portions of an apartment building that are to be maintained by the Association, or remove any portion of such, or make any additions to them, or do anything that would jeopardize the safety or soundness of the apartment building or impair any easement, without first obtaining approval in writing of owners of all apartments in which such work is to be done and the approval of the board of directors of the Association. A copy of plans for all such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of the work.

5.2 Common elements.

a. By the Association. The maintenance and operation of the common elements shall be the responsibility of the Association and a common expense.

b. Alteration and improvement. After the completion of the improvements included in the common elements contemplated by this Declaration, there shall be no alteration nor further improvement of the real property constituting the common elements without prior approval in writing by the owners of not less than 75% of the common elements except as provided by the By-laws. Any such

alteration or improvement shall not interfere with the rights of any apartment owners without their consent. The cost of such work shall not be assessed against a bank, life insurance company or savings and loan association that acquires its title as the result of owning a mortgage upon the apartment owned, unless such owner shall approve the alteration or improvement, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. The share of any cost not so assessed to the other apartment owners in the shares that their shares in the common elements bear to each other. There shall be no change in the shares and rights of an apartment owner in the common elements altered or further improved, whether or not the apartment owner contributes to the cost of such alteration or improvements.

6. Assessments. The making and collection of assessments against apartment owners for common expenses shall be pursuant to the By-laws and subject to the following provisions:

6.1 Share of common expense. Each apartment owner shall be liable for a proportionate share of the common expenses, and shall share in the common surplus, such shares being the same as the undivided share in the common elements appurtenant to the apartments

owned by him. Provided, however, that if services are made available to apartment owners from a revenue-producing operation, such as but not limited to the operation of a restaurant or bar, no assessment on account of such services shall be made against a bank, life insurance company or savings and loan association that acquires its title as a result of owning a first mortgage upon an apartment, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; but this shall not preclude such an assessment against an occupant of an apartment owned by such an institution for services voluntarily accepted by the occupant. The shares of any cost or loss not so assessed to the other apartment owners in the shares that their shares in the common elements bear to each other.

6.2 Interest; application of payments. Assessments and installments on such assessments paid on or before ten days after the date when due shall not bear interest, but all sums not paid on or before ten days after the date shall bear interest at the rate of ten percent per annum from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

6.3 Lien for assessments. The lien for unpaid assessments

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shall also secure reasonable attorney's fees incurred by the Association incident to the collection of such assessment or enforcement of such lien.

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

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

7.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit B.

7.2 The By-laws of the Association shall be the bylaws of the condominium, a copy of which is attached as Exhibit C.

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

property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

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

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

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

8.1 Authority to purchase; named insured. All insurance policies upon the condominium property shall be purchased by the Association. The named insured shall be the Association individually and as agent for the apartment owners, without naming them, and as agent for their mortgagees. Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance

to the mortgagees of apartment owners. Such policies shall provide that payments by the insurer for losses shall be made to the Insurance Trustee designated below, and all policies and their endorsements shall be deposited with the Insurance Trustee. Apartment owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expense.

8.2 Coverage.

a. Casualty. All buildings and improvements upon the land shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and all personal property included in the common elements shall be insured for its value, all as determined annually by the board of directors of the Association. Such coverage shall afford protection against:

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

(2) such other risks as from time to time shall be customarily covered with respect to the buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

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

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

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

8.3 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

8.4 Insurance trustee; shares of proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners and their mortgagees as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Ormond Beach First National Bank, as Trustee, or to such bank in Florida with trust powers as may be designated as insurance trustee by the board of directors of the Association, which trustee is referred to in this

instrument as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes elsewhere stated in this instrument and for the benefit of the apartment owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

a. Common elements. Proceeds on account of damage to common elements and undivided share for each apartment owner, such share being the same as the undivided share in the common elements appurtenant to his apartment.

b. Apartments. Proceeds on account of damage to apartments shall be held in the following undivided shares:

(1) When the building is to be restored - for the owners of damaged apartments in proportion to the cost of repairing the damage suffered by each apartment owner, which cost shall be determined by the Association.

c. Mortgagees. In the event a mortgagee endorsement has been issued as to an apartment, the share of the apartment

owner shall be held in trust for the mortgagee and the apartment owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distribution of such proceeds made to the apartment owner and mortgagee pursuant to the provisions of this Declaration.

8.5 Distribution of proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

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

b. Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of such as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee or an apartment and may be enforced by such mortgagee.