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Regime &
By-Laws

DECLARATION OF CONDOMINIUM REGIME

PORTOFINO HARBOUR DOCKOMINIUMS

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TABLE OF CONTENTS

INTRODUCTIONS	PAGE
I. - DEFINITIONS	
1.1 "Assessment"	2
1.2 "Association"	2
1.3 "Building"	2
1.4 "By-Laws"	2
1.5 "Common Elements"	2
1.6 "Common Expenses"	2
1.7 "Dockominium Project" or "Project" ..	3
1.8 "Dockominium"	3
1.9 "Entire Premises" or "property"	3
1.10 "First Mortgagee"	3
1.11 "General & Limited Common Elements" ..	3
1.12 "Map," "Survey Map," or "Plans"	4
1.13 "Owner"	4
1.14 "Pier"	4
1.15 "Special Assessment"	4
1.16 "Unit"	4
II. - ESTABLISHMENT OF REGIME	
2.1 - Grant and Submission	4
2.2 - Description of Property	4
2.3 - Division of Fee Estates	5
2.4 - Title	6
III. - MOORAGE AND USE	
3.1 - Conveyance of Condominium Units	6
3.2 - Description of Condominium Units ...	6
3.3 - Right of Access and Emergency Repairs	6
3.4 - No Partition	7
3.5 - Tax Assessments	7
3.6 - Labor and Materialman Lien	7
3.7 - Use Restrictions	
(A) Moorage and Slip Use	7
(B) Structural Alterations or Modifications	7
(C) Right to Lease	8
(D) Nuisance	8
(E) Pets	8
(F) Use of Common Elements	8
(G) Rules and Regulations	9
(H) Vehicles	9
(I) Sales or Management Office ..	9
(J) Restrictions on New Improvements	9
(K) Enforceability	9
IV. - ADMINISTRATION	9
V. - MAINTENANCE	10
5.1 - Unit and Limited Common Elements ...	10
5.2 - Limitation on Work	10
5.3 - Compliance	11
VI. - EXPENSES	11
6.1 - Common expenses and Reserve	11
6.2 - Assessments	11
6.3 - Insurance	12
6.4 - Payment Date	13
6.5 - All Owners Obligated	13
6.6 - Lien for Assessments	13
6.7 - Estoppel Statements	14
6.8 - Liability	14

TABLE OF CONTENTS
Page 2

VII.	- FINANCING	15
7.1	- Right to Finance	15
7.2	- Foreclosure	15
7.3	- Amendment Affecting Financing	15
7.4	- Breach	15
VIII.	- DAMAGE, REPLACEMENT AND REPAIR	16
8.1	- Power of Attorney	16
8.2	- Definition of Repairs	16
8.3	- Reconstruction with Insurance Proceeds	16
8.4	- Assessment if Insurance is Insufficient	16
8.5	- Sale After Destruction	17
8.6	- Plan for Reconstruction	18
8.7	- Obsolescence and Replacement	18
8.8	- Obsolescence and Sale	19
IX.	- OPERATION DURING CONSTRUCTION, ETC.	19
X.	- PROTECTION OF MORTGAGEE	19
10.1	- Notice to Association	19
10.2	- Notice of Default	20
10.3	- Examination of Books	20
10.4	- Reserve Fund	20
10.5	- Annual Audits	20
10.6	- Notice of Meetings	20
10.7	- Approval for Amendments to Declaration, etc.	20
10.8	- Notice of Damage or Destruction	20
10.9	- Management Agreements	21
10.10	- Taxes, Assessments and Charges	21
10.11	- Other Acts by Association Requiring Approval of First Mortgagees or Owners	21
XI.	- TERMINATION AND REVOCATION	21
XII.	- MISCELLANEOUS	22
12.1	- Compliance With Declaration	22
12.2	- Severability	22
12.3	- Amendment	23
12.4	- Notice	23
12.5	- Construed Under Laws of Texas	23
12.6	- Word Construction	23
EXHIBIT "A"	- Property, Site Plan and Legal Description	
EXHIBIT "B"	- By-Laws	
EXHIBIT "C"	- Plans of the Improvements and Units	
EXHIBIT "D"	- Percentage Ownership	
JOINDER OF LIENHOLDER		

DECLARATION OF CONDOMINIUM REGIME
PORTOFINO HARBOUR DOCKOMINIUMS

This Declaration of Condominium Regime is made and executed this _____ day of _____, 1984, by PORTOFINO HARBOUR, LTD., a Texas Limited Partnership, (hereinafter referred to as "Developer"), pursuant to the provisions of the Texas Condominium Act, as stated at Title 7, Chapter 81, of the Texas Property Code, as amended (hereinafter referred to as the "Act"), for the purpose of submitting the hereinafter described real property, including the area above and below the surface of water, and the improvements related thereto and located thereon to a condominium regime.

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property and rights to use said property in the County of Galveston, State of Texas, (herein called the "Subject Property") more particularly described in the attached Exhibit "A;" and

WHEREAS, Developer has caused to be prepared plans for the construction of moorage facilities, boat slips, piers and other improvements appurtenant thereto on the Subject Property, which when completed will consist of two hundred twelve (212) separately designated slip units; and,

WHEREAS, Developer desires by recording this Declaration of Condominium Regime, together with the By-Laws attached hereto as Exhibit "B" and the plans and specifications attached hereto, to establish a project known as PORTOFINO HARBOUR DOCKOMINIUMS under the provisions of the Act, sometimes herein after the "Project"; and,

WHEREAS, Developer by declaring the condominium regime desires to establish a plan for the individual ownership in fee simple of the area of space contained within each slip unit, including the area above and below the surface of water, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the Subject Property;

NOW, THEREFORE, Developer does upon the recording hereof, establish Portofino Harbour Dockominiums as a condominium project under the Act and does declare that PORTOFINO HARBOUR DOCKOMINIUMS shall, after such establishment, be held, conveyed, hypothecated, encumbered, leased, rented, improved and in any other manner utilized, subject to the provisions of the Act and to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration of Condominium Regime all of which shall be deemed to run with the title to all or any portion of PORTOFINO HARBOUR DOCKOMINIUMS and shall be a burden and a benefit to the Developer and any persons acquiring or owning any interest in PORTOFINO HARBOUR DOCKOMINIUMS, their grantees, heirs, executors, administrators, successors and assigns. In furtherance of the establishment of this condominium project, it is provided as follows:

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DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the following meanings:

1.1 "Assessment" shall mean and refer to the funds required to pay Common Expenses, other lawfully agreed upon expenses, plus surplus and reserves, as such costs, expenses and reserves are determined by the Managing Agent or Board of Directors and are levied by the Board of Directors upon all of the Owners.

1.2 "Association" shall mean and refer to PORTOFINO HARBOUR DOCKOMINIUMS OWNERS ASSOCIATION, INC., its successors and assigns, comprised of the Owners of all the Units of a non-profit association, the By-Laws of which shall govern the administration of the Project and the members of which shall be all of the Owners of the Units. The Association may be, at Developer's election and as herein provided, a corporation organized pursuant to the Texas Non-Profit Corporation Act.

1.3 "Building" means any building within the Project.

1.4 "By-Laws" means the By-Laws of the Association attached hereto as Exhibit "B" for reference and any amendment, modification or revision thereto as therein permitted.

1.5 "Common Elements" shall mean and refer to both the General and Limited Common Elements as described herein.

1.6 "Common Expenses" means and includes:

A. All sums lawfully assessed against the General Common Elements by the managing agent or Board of Directors of the Project;

B. Expenses of administration and management, maintenance, repair or replacement of the General Common Elements or Limited Common Elements;

C. Expenses agreed upon as Common Expenses by the Owners; and,

D. Expenses declared Common Expenses by provisions of this Declaration and by the By-Laws.

E. Common Expenses may include, but are not limited to, the overhead expenses of the Association, costs of maintenance, repair and operation of the Common Elements, taxes and special assessments unless separately assessed, insurance premiums for insurance coverage as deemed desirable or necessary by the Association, utility charges for the General Common Elements, trash and garbage collection, guard service, burglar alarm service, landscape maintenance, janitorial service, manager's salary, legal and accounting fees, and management fees.

F. Common expenses shall not include any reserve fund.

1.7 "Dockominium Project" or "Project" shall mean and refer to PORTOFINO HARBOUR DOCKOMINIUMS, as a condominium project established in conformance with the provisions of the Act.

1.8 "Dockominium" shall mean and refer to the separate ownership of a Unit, together with an undivided ownership interest in the Limited and General Common Elements expressed as a fraction of the entire ownership interest in the Common Elements as set forth and defined herein.

1.9 "Entire Premises" or "property" means and includes the land, buildings, moorage areas, slips, Piers, finger-piers, docks, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

1.10 "First Mortgagee" means any holder of a security interest in a Unit, represented by a first deed of trust, mortgage or security agreement giving such holder a first and paramount priority under Texas law.

1.11 The General and Limited Common Elements of the Condominium Project are as follows:

A. The General Common Elements consists of:

(1) The Subject Property and any rights to use the property, including the area above and below the surface of water, in the Project, as more particularly described in Exhibit "A";

(2) The foundations, walls, columns, walkways, moorage areas, Piers, docks, roofs, ceilings and floors, or communication ways and any other portion of the Buildings and other improvements located on the land and any rights to use the land described above not included within any Unit;

(3) The premises and facilities, if any, used for maintenance or repair of the Project;

(4) Except as the use may be hereinafter restricted, all common recreational facilities, including without limitation any office, swimming pool, Building, grounds, yards and walkways;

(5) Parking spaces not designated with a Unit number and described on the condominium plan are unassigned parking spaces; and

(6) All other elements desirable or rationally of common use or necessary to the existence, upkeep and safety of the Project.

B. The Limited Common Elements, being those Common Elements reserved for the use of specific Units to the exclusion of others, consist of:

(1) Compartments or installations of central services such as power, light, electricity, telephone, radio, gas, cold and hot water, plumbing, reservoirs, water tanks and pumps, incinerators, and all similar devices and installations corresponding to a Unit;

(2) Docks, decks and fingerpiers as are designated with a number as described on the plan and specifications attached hereto as Exhibit "C"; and

(3) All of the portions of the Project which are specifically reserved for the exclusive use of the Owner of a Unit as shown on Exhibits "A" and "C" attached hereto.

1.12 "Map", "Survey Map", or "Plans" means and includes the engineering survey of the Subject Property with all of the improvements located thereon, the diagrammatic plan depicting a part of or all of the improvements, being herewith filed, consisting of two (2) labeled exhibits, and being Exhibits "A" and "C".

1.13 "Owner" shall mean and refer to a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who or which is the record owner of fee simple title to one or more Units in the Project.

1.14 "Pier" shall mean any dock or pier with a walkway, and to which a fingerpier is perpendicularly attached.

1.15 "Special Assessment" shall mean an additional assessment created for any purpose of the Association as a whole.

1.16 "Unit" shall mean and refer to the surface of water, the area above and below the surface of water and a portion of the fingerpier, to be used as a slip for the moorage of a boat. Except for Unit C-19 which is not a rectangle, the perimeter of each Unit shall be rectangular in shape with one length boundary being the centerline of its adjacent fingerpier, and except as otherwise specifically described as hereafter provided, for units at the end of a Pier one width boundary being the harbour edge of the adjacent Pier. Opposite length and width boundaries of equal dimensions shall enclose the Unit. Each Unit is further described, delineated and delimited on the plat attached hereto as Exhibit "C".

II.

ESTABLISHMENT OF REGIME

2.1 GRANT AND SUBMISSION

Developer hereby grants and submits to condominium ownership all of the Subject Property together with all rights to use said property, the improvements to be constructed thereon, the Project and all appurtenants thereto and in anywise belonging.

2.2 DESCRIPTION OF PROPERTY

The specifications attached hereto as Exhibits "A" and "C" shall be filed for record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any Unit. Such specifications consists of and sets forth (1) the legal description of the surface of the property; (2) the linear measurements and location, with reference to the exterior boundaries of the property, of the Buildings and all other improvements built

or to be built on said property by the Developer; (3) plans of the Buildings or Piers built or to be built thereon showing the location; (4) the Unit designation and the linear dimensions of each Unit, and the Limited Common Element.

2.3 DIVISION OF FEE ESTATES

The real property is hereby divided into the following separate fee simple estates:

A. Two Hundred Twelve (212) fee simple estates consisting of Two Hundred Twelve (212) separately designated Units, each Unit identified by number and being described on Exhibit "C" as follows:

PIER A - containing Twenty-seven (27) Units numbered One (1) through Twenty-seven (27), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier A.

PIER B - containing Twenty-four (24) Units numbered One (1) through Twenty-four (24), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier B.

PIER C - containing Nineteen (19) Units numbered One (1) through Nineteen (19), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier C.

PIER D - containing Twenty (20) Units numbered One (1) through Twenty (20), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier D.

PIER E - containing Twenty (20) Units numbered One (1) through Twenty (20), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier E.

PIER F - containing Ten (10) Units numbered One (1) through Ten (10), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier F.

PIER G - containing Fourteen (14) Units numbered One (1) through Fourteen (14), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier G.

PIER H - containing Twenty (20) Units numbered One (1) through Twenty (20), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier H.

PIER I - containing Nineteen (19) Units numbered One (1) through Eighteen (18), inclusive, and Twenty (20), the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier I.

PIER J - containing Eighteen (18) Units numbered One (1) through Eighteen (18), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier J.

PIER K - containing Sixteen (16) Units numbered One (1) through Sixteen (16), inclusive, the size, dimensions,

location and boundaries of each being detailed on the survey plat of Pier K.

PIER L - containing Five (5) Units numbered One (1) through Five (5), inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Pier L.

As set forth on Exhibit "C", the design of each Unit is labeled Slip Type a, b, c, d, e, f, g, h, i, j, k, l, ll, m, n and o, with varying dimensions. Accordingly, references on the attached plans and specifications should be keyed to the basic Slip Types as they relate to the various Unit numbers.

B. The remaining portion of the entire premises, referred to as the General Common Elements, shall be held in common by the Owners, the percentage interest in the General Common Elements attributable to the respective Units being set out in Exhibit "D" hereto, each such undivided interest being appurtenant to one of the Units covered hereby as scheduled.

2.4 TITLE

Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Developer or any Owner shall be deemed an acknowledgment of and consent to this Declaration and its contractual provisions. Additionally, because a portion of the property is subject to tidal waters, the water is subject to use by the general public, limited by the Owners' rights to prohibit anchorage, moorage or trespassing.

III.

MOORAGE AND USE

3.1 CONVEYANCE OF CONDOMINIUM UNITS

Each Unit and the undivided ownership interest in the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit. Any conveyance of a Unit shall be deemed to include the Common Elements appurtenant thereto.

3.2 DESCRIPTION OF CONDOMINIUM UNITS

Every deed, lease, mortgage, trust deed or other instrument shall legally describe a Unit by the letter of the Pier followed by the Unit number and the words "Portofino Harbour Dockominiums" with further reference to this Declaration and the Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect a Unit, the Common Elements appurtenant thereto and such Unit's percentage of interest in the Common Elements.

3.3 RIGHT OF ACCESS AND EMERGENCY REPAIRS

The Association shall have the right of access to each Unit and its appurtenant Limited Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of Common Elements, or at any time deemed necessary for the making of emergency

repairs to prevent damage to the Common Elements or to the Unit or to another Unit. In the event any damage occurs to an individual Unit as a result of the repair of or repairs to the Common Elements, the cost for restoration of said damaged Unit shall be a Common Expense. Further, in the event a Common Element is damaged as a result of actions or inactions of a Unit Owner or his guests, invitees, tenants or others taking or occupying through said Owner, then such Owner shall be liable for any and all costs incurred for the repair and restoration of the damaged Common Element.

3.4 NO PARTITION

Except as provided herein, no Owner shall bring an action for partition of a Unit or of the Common Elements.

3.5 TAX ASSESSMENTS

It is specifically stipulated that each Unit shall be subjected to separate tax assessments and taxation by the appropriate governmental authority.

3.6 LABOR AND MATERIALMAN LIEN

Subsequent to the completion of the improvements described on the Map, no labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Owner thereof or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the Unit and Common Elements owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners, the Developer and the Association from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the General Common Elements for construction performed or for labor, materials, services or products incorporated in the Owner's Unit at such Owner's request. Upon written request of any Owner the Association shall have the right to enforce such indemnity by Special Assessment against the Owner's Unit.

3.7 USE RESTRICTIONS

A. Moorage and Slip Use. No Unit in the Project shall be used for other than moorage and boat slip purposes, and the Common Elements shall be used only for purposes consistent with the use of moorage and boat slips. No Owner, or any of Owner's guests, invitees, or relatives shall occupy a moored boat or vessel for more than three (3) consecutive overnight periods, nor more than eight (8) overnight periods in thirty (30) days without first obtaining an overnight permit from the Association. The Association shall have the right to limit the number of overnight permits issued and outstanding at any given time. In the event the Association leases all or any portion of the marina manager's quarters, commercial use thereof is permitted pursuant to the terms of a lease approved by the Association. No Unit shall be utilized as a location for commercial boat repair or for the moorage of commercial fishing boats.

B. Structural Alterations or Modifications. No Owner shall make alterations or modifications to his Unit or to any of the Common Elements, including the erection of antennae, aerials, awnings, or other attachments without

the prior written approval of the Association. The Association shall have the right to authorize any and all structural alteration or modifications, provided however, the Association shall not approve any alterations or modifications which would jeopardize or impair the soundness, safety or appearance of the Project and such alterations shall not affect the percentage of value assigned to each Unit Owner in Exhibit "D" hereof.

C. Right to Lease. No Unit Owner may lease less than the entire Unit. Any lease agreement shall be in writing and shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the By-Laws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

D. Nuisance. No immoral, improper, unlawful or offensive activity shall be carried on, in or about any Unit or upon the Common Elements, nor shall anything be done which may be or become an annoyance or a nuisance to the Owners. No Owner shall do or permit anything to be done, or keep or permit to be kept in his Unit or on the Common Elements anything that will increase the rate of insurance on the Project. No Owner shall store any dangerous explosive or inflammable liquids or other materials either in or upon his Unit or upon the Common Elements.

E. Pets. No animals shall be kept on or about a Unit except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept. No more than one household pet may be kept on or about a Unit without written permission of the Board of Directors of the Association which shall not be unreasonably withheld. No pets may be permitted to run loose upon the Common Elements, and any Owner who causes any animal to be brought or kept upon the premises of the Condominium Project shall indemnify and hold harmless the Association for any loss it may sustain or which may be claimed against the Association as a result of the presence of such animal on the premises, whether or not the Association has given its permission therefor.

F. Use of Common Elements. The Common Elements shall not be used for storage of supplies, personal property, trash or refuse of any kind (except common trash receptacles, storage buildings or other similar structures which may from time to time be placed upon the Common Elements at the discretion of the Board of Directors of the Association); nor shall the Common Elements be used in any way for the drying, shaking or airing of clothing or other items. Stairs, entrances, Piers, walkways, sidewalks, yards, driveways and parking areas shall not be obstructed in any way nor shall unauthorized persons or pets play therein or thereon or use such areas for other than their intended purposes. In general, no activities shall be conducted nor condition maintained by any Owner either on or about his Unit or upon the Common Elements which despoils the appearance of the Project.

G. Rules and Regulations. Regulations concerning the use of the Project shall be promulgated from time to time by the Developer or the Board of Directors of the Association and such regulations, and subsequent regulations duly adopted from time to time, shall be binding on all members of the Association. The Board of Directors of the Association shall specifically have the right and power to restrict the use of the second floor of the swimming pool recreational Building, and to establish fee and use schedules available to both Owners and non-Owners.

H. Vehicles. Vehicles, either motor or marine, not in operating condition shall not be parked or moored upon the premises of the Project. No parking space shall be converted for living, recreational, business or commercial purposes, nor shall anything be stored in any parking space so as to prevent the parking of a vehicle therein.

I. Sales or Management Office. None of the restrictions contained in this Section 3.7 shall apply to the sales, management office, harbour master's quarters, sales models or commercial activities, signs or billboards, if any, of the Developer during the sales period of the Project or of the Association in furtherance of its powers and purposes set forth herein and/or in its Articles of Incorporation and By-Laws as the same may be amended from time to time, this exemption shall include, without limitation the right and power of the Association to own a Unit for the use and enjoyment of the manager of the Project, and further to lease all or any portion of the harbour master's quarters for commercial use.

J. Restrictions on New Improvements. No additional permanent or temporary improvements of any kind, including landscaping, in excess of five (5) feet in height shall be placed within thirty (30) feet of any western or southern boundary lines of the Project, except for any permanent structures constructed by Developer at the initial construction of the Project.

K. Enforceability. These restrictive covenants as to the use of the Units and the Common Elements shall be a burden upon the fee title to the property herein described shall run with the title to the land of same until duly amended by the Association as herein permitted.

IV.

ADMINISTRATION

The administration of this Project shall be governed by this Declaration and the By-Laws of PORTOFINO HARBOUR DOCKOMINIUMS OWNERS ASSOCIATION, INC., a non-profit association, and the Articles of Incorporation of such Association, hereinafter referred to as the "Association". A copy of By-Laws is hereto attached marked Exhibit "B" and incorporated herein; and same shall be deemed adopted by the Developer as sole owner of the Property herein described, and all Owners shall be bound thereby. The Developer may, at its election, cause to be formed a Texas non-profit corporation bearing said name, in which event such non-profit corporation shall thereafter act and do all things to be

done by the Association, and the non-profit corporation, if formed, shall be bound by, adopt and observe as its By-Laws, the By-Laws hereto attached marked Exhibit "B". "Association" as here used shall refer to the member Owners as a group, both before and after incorporation. In the event of incorporation, a certified copy of the Certificate of Incorporation of PORTOFINO HARBOUR DOCKOMINIUMS OWNERS ASSOCIATION, INC., shall provide that three (3) persons shall act as a Board of Directors and shall serve as the Directors until their successors have been elected and qualified. An Owner of a Unit, upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of his ownership. The aggregate number of votes for all members of the Association shall be one hundred (100) and shall be divided among the respective Unit Owners in accordance with their respective percentages of ownership interest in the Common Elements as set forth in Exhibit "D" hereto. The Board of Directors may retain a Managing Agent for PORTOFINO HARBOUR DOCKOMINIUMS OWNERS ASSOCIATION, INC. with such responsibilities of management as may be determined by the Board of Directors. Any management agreement shall not have a term of more than three (3) years, and shall be terminable with cause upon one hundred eighty (180) days written notice. The "Association Date" shall be (i) the date on which Developer elects to call the first meeting of the Unit Owners for election of a Board of Directors, or (ii) November 1, 1987, or, (iii) one hundred twenty (120) days after seventy-five percent (75%) of the Units shall be sold to Owners, whichever first occurs. On the Association Date, all powers of the Declarant, as Developer, shall terminate with regard to the administration and control of the Association.

V.

MAINTENANCE

5.1 UNIT AND LIMITED COMMON ELEMENTS

An Owner shall maintain and keep in repair his Unit, including the fixtures thereof. All fixtures and equipment, installed to the Unit, commencing at a point where the utility lines, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") approach the Unit shall be maintained and kept in repair by the Owner thereof. The Owner's obligation to maintain and repair as set forth herein shall also extend to any damage cause by Owner's guests, tenants and invitees. Should an Owner fail to maintain or repair the Limited Common Elements related to his Unit, then the Association shall have the right to perform such maintenance and repair as it deems reasonably necessary for the benefit of the Association, and the costs thereof shall become a Special Assessment against such Unit. Notwithstanding any provision herein to the contrary, except for damage caused by an Owner, his guests, tenants and invitees, the Association shall maintain and repair general wear to all portions of the fingerpiers.

5.2 LIMITATION ON WORK

An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Project or impair any easement or hereditament. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatever upon any of the General Common Elements, except with prior written consent of the Board of Directors first obtained.

5.3 COMPLIANCE

Each Owner shall comply strictly with the provisions of this Declaration, the By-Laws, and the decisions, resolutions, rules and regulations of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Managing Agent or Board of Directors on behalf of the Owners, or, in proper cases, by an aggrieved Owner.

VI.

EXPENSES

6.1 COMMON EXPENSES AND RESERVE

The costs and expenses of administration and of maintenance and repairs of the General Common Elements, and in the proper case, the Limited Common Elements of the Project and the Units, and any other expenses lawfully agreed upon by the Association, shall be borne prorata by all Owners, which expenses have been hereinabove defined as "Common Expenses." The Common Expenses for the fiscal year will be estimated by the Managing Agent or the Developer, and each Owner shall pay their prorata share of the Common Expenses on a monthly basis, with the exception of the Developer which may pay its prorata share on the Association Date. Prior to the Association Date, the Developer shall pay all deficiency for the Common Expenses, and such payment shall not be limited by the amount of the Assessments for the Common Expenses. Furthermore, such payment shall never be less than the Developer's prorata share of the Common Expenses, but it shall not include any reserve or surplus fund payments. At the Association Date, the actual Common Expenses shall be determined from the date of this Declaration until the Association Date. The actual Common Expenses will be determined on a prorata basis for each unit per month. If after determination of the actual per unit Common Expenses, an Owner, other than the Developer, has paid more than their actual prorata share of the Common Expenses, then that Owner's excess payment may be retained by the Association and credited to the account for future Assessments of said Owner, or the excess may be refunded to said Owner, as the members of the Association may determine. Prior to the Association Date, the Developer shall not be entitled to any refund for the deficiency paid on behalf of the Association. The Association shall provide for future contingencies through the creation of a reserve or surplus fund. Payment of an Assessment into the reserve fund shall not be a part of, nor be considered to be, a Common Expense. After the Association Date, the Developer shall pay its full Assessment, including Common Expenses and the reserve or surplus requirement, on a monthly basis.

6.2 ASSESSMENTS

The Assessments made to provide funds for Common Expenses shall be based upon the cash operating requirements deemed to be such aggregate sum as the Managing Agent of the Association shall from time to time determine is to be paid by all of the Owners. Such Assessments shall be to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements or Limited Common Elements,

which sum may include, in addition to the costs set forth in Article 1.6E hereof, among other things, cost of management, taxes, fire insurance with extended coverage and vandalism and malicious mischief with endorsements attached, issued in the amount of the maximum and public liability and other insurance premiums, landscaping and care of grounds, common lighting, repairs and renovations, garbage collections, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of the Declaration, and the payment of any deficit remaining from a previous period, (except for operating deficits incurred by the Developer prior to the Association Date), the reserve fund provided in Article 10.4, as well as other costs and expenses relating to the General Common Elements or Limited Common Elements. The Association may levy a Special Assessment on all Owners of the Association. The Association shall vote as provided in Article VIII, Section 2B of the By-laws for PORTOFINO HARBOUR DOCKOMINIUMS. The omission or failure of the Board to fix the Assessment for any month shall not be deemed a waiver, modification, or a release of the Owners from the obligation to pay.

6.3 INSURANCE

The Managing Agent or Board of Directors shall obtain and maintain at all times insurance of the type and kind provided herein, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium slips, docks, buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. Insurance coverage for bulkheading and marina dredging is not reasonably currently available, and therefore the same shall not be required. Additionally, the Association shall carry fidelity insurance as related to the officers and directors of the Association and the Association's administration thereof. The insurance shall be carried in blanket policy form naming the Association the insured, which policy or policies shall identify the interest of each Unit Owner and which shall provide for a standard, non-contributory mortgage clause in favor of each First Mortgagee. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days prior written notice to each First Mortgagee. Said Managing Agent or Board of Directors shall, upon request of any First Mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy, as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. Further, such policies shall contain provisions requiring that the insurer waive its subrogation rights with respect to asserting any claim it might have against negligent Unit Owners.

6.4 PAYMENT DATE

All Owners shall be obligated to pay the Assessments imposed by the Board of Directors or Managing Agent of the Association. The Assessments for insurance premiums shall be based upon the proportion that the total premium(s) carried on the Project bear(s) to total coverage for a single Unit. Assessments for the Common Expenses, including insurance, and reserves when established, shall be due monthly in advance on or before the tenth day of each month and shall require the imposition and assessment of a late charge of \$15.00 for each Assessment not paid when due. Payment of monthly Assessments shall be prorated if the ownership of a Unit commences on a day other than on the first day of the month. The Association shall have the right to collect an amount not to exceed twelve (12) month Assessments in advance. Special Assessments shall be due and payable at such time as established by the Board of Directors.

6.5 ALL OWNERS OBLIGATED

No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements, or by abandonment of his Unit.

6.6 LIEN FOR ASSESSMENTS

All sums assessed but unpaid, by any Unit, including interest thereon at the maximum non-usurious annual rate, cost of collection and attorneys fees incurred for collection shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for:

(a) Tax and special assessment liens in favor of any governmental body with taxing authority over the Units, and

(b) A First Mortgage or First Deed of Trust of record prior to the delinquency of payment, including all unpaid obligatory sums as may be provided by such encumbrance.

To evidence such lien the Board of Directors or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in office of the Clerk of Galveston County, Texas. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the lien affecting the defaulting Owner's Unit, by the Association, in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to purchase the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same. The lien attaching

hereunder may be foreclosed judicially. The acquisition of a Unit shall be deemed the consent of an Owner to such lien, and each Owner shall execute such document as may be reasonably required by the Managing Agent or Board of Directors to evidence this lien. If the Owner refuses, the Managing Agent shall be irrevocably vested with a power of attorney for such non-consenting Owner, to execute and deliver such documents to the Association.

In addition to the lien herein imposed, a Vendor's Lien may be retained in each deed from the Developer to a Unit in order to secure the payment of all sums due under this Declaration, subordinate, however, as above set forth.

The amount of the Common Expenses assessed against each Unit shall also be a debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expense payable with respect to such Unit, and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance.

6.7 ESTOPPEL STATEMENTS

Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Unit, and upon payment of a reasonable fee as may from time to time be set by the Association, the Association, by its Managing Agent or Board of Directors shall issue a written statement setting forth the unpaid Common Expenses, if any, with respect to the subject Unit, the amount of the current monthly Assessments and the date that such Assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association for all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within twenty (20) days, all unpaid Assessments which become due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

6.8 LIABILITY

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit for his proportionate share of the Assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided however, that upon written request, and payment of a reasonable fee as determined by the Association any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Directors, setting forth the amount of the unpaid Assessments, if any, with respect to the subject unit, the amount of the current monthly Assessment and the date that such Assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within twenty (20) days of such request, then such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments against the subject Unit.

VII.

FINANCING

7.1 RIGHT TO FINANCE

Any Owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument, provided that such first deed of trust, mortgage and security agreement shall be subordinate to this Declaration, unless herein specifically provided to the contrary. The Owner of a Unit may create a second mortgage on the following conditions: (1) that any such second mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Assessments, and other payments created by this Declaration and by the By-Laws; and (2) that the mortgagee under any second mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a second mortgagee upon written request to the Association.

7.2 FORECLOSURE

Any First Mortgagee, upon foreclosure of its lien on a Unit, or upon acceptance of a deed in lieu of foreclosure thereon, shall not be required to pay any unpaid Assessments owing on said Unit. Any assessment lien created or claimed under the provisions of this Declaration of Condominium Regime shall be subject and subordinate to the rights of any First Mortgagee of any duly recorded first mortgage upon one or more Units made in good faith and for value. No lien created under the provisions hereof shall in any way defeat, invalidate or impair the rights of any first mortgagee under any such duly recorded First Mortgage unless such mortgage shall expressly subordinate its interest, in writing, to such lien.

7.3 AMENDMENT AFFECTING FINANCING

No amendment to this Declaration of Condominium Regime shall affect the rights of the mortgagee of any such mortgage which is made in good faith and for value; provided that any such mortgage is recorded prior to the recordation of such amendment and written notice of delivery and recordation of such mortgage is given to the Association; provided further that the benefit of this paragraph shall not apply to the mortgagee of any such prior mortgage unless such mortgagee shall either join in the execution of such amendment or shall approve said amendment in writing as a part of said amendment.

7.4 BREACH

No breach of any provision of this Declaration of Condominium Regime shall impair or invalidate any lien of any duly recorded mortgage made in good faith and for value encumbering one or more Units; provided, however, that all the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration of Condominium Regime shall be binding upon and effective

tive against any person who acquires title to or any beneficial interest in any Unit by way of foreclosure, or otherwise.

VIII.

DAMAGE, REPLACEMENT AND REPAIR

8.1 POWER OF ATTORNEY

All of the Owners, by the acceptance of any deed or other conveyance of a Unit, irrevocably name, designate, constitute and appoint PORTOFINO HARBOUR DOCKOMINIUMS OWNERS ASSOCIATION, INC., or its successor, if same be hereafter organized, their true and lawful attorney in their name, place, and stead, for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. This power of attorney shall be coupled with an interest and irrevocable. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Unit Owner which are necessary and appropriate to exercise the powers herein granted.

8.2 DEFINITION OF REPAIRS

Repair and reconstruction of the improvement(s) as used in the succeeding paragraphs means restoring the improvement(s) to substantially the same conditions in which it existed prior to the damage, with each Unit and the General and Limited Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements unless the Owners and all First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

8.3 RECONSTRUCTION WITH INSURANCE PROCEEDS

In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

8.4 ASSESSMENT IF INSURANCE IS INSUFFICIENT

If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than two-thirds (2/3) of all of the General Common Elements, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an Assessment to be made against all of the Owners and their Units. Such deficiency Assessment shall be a Common Expense made pro rata according to each Owner's percentage interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Unit

and may be enforced and collected as is provided in Paragraph 6.6. In addition thereto, the Association as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, and each Owner by the acceptance of the conveyance of a Unit does hereby grant to the Association the limited power of sale as herein stipulated. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in following order:

- A. For payment of taxes and Special Assessments
liens in favor of any assessing entity;
- B. For payment of the balance of the lien of any
first mortgage;
- C. For payment of unpaid Common Expenses;
- D. For payment of junior liens and encumbrances
in order of and to the extent of their priority; and
- E. The balance remaining, if any, shall be paid
to the Unit Owner.

8.5 SALE AFTER DESTRUCTION.

If more than two-thirds (2/3) of all of the General Common Elements are destroyed or damaged, and if all the Owners of the Units then under construction or completed do not voluntarily, within one hundred and twenty (120) days thereafter, make provision for reconstruction, which plan must have the unanimous approval or consent of every First Mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining premises shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such dividend proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall further be identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any account to another, toward the full payment of the lien of any first mortgage against the Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each Unit Owner's percentage interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in this Article.

8.6 PLAN FOR RECONSTRUCTION.

Any Assessment made in connection with such reconstruction plan shall be a Common Expense and made pro-rata according to each Owner's percentage interest in the Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the Assessment. The Assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in Paragraph 6.6. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association. Each Owner by the acceptance of a conveyance of any Unit hereby grants to the Association the limited power of sale herein set forth. The proceeds derived from sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in Paragraph 8.4 hereof.

8.7 OBSOLESCENCE AND REPLACEMENT.

Subject to the approval of all First Mortgagees, the Owners representing an aggregate ownership interest of seventy-five percent (75%) of the Units then under construction or completed, or more, may agree that the General Common Elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the Owners as Common Expense; provided, however, that any Owner not agreeing to such renewal or reconstruction may give written notice to the Association that such Unit shall be purchased by the Association, for the fair market value thereof. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "Commencing Date" from which all periods of time mentioned herein shall be measured. Within (10) ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) the appraiser who shall be a member of the Galveston Real Estate Board. If either party fails to make such a nomination, the appraiser nominated shall within five days after default by the other party appoint and associate with him another appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser, if they can agree on such person. If they are unable to agree upon such third appraiser, then each appraiser previously appointed shall nominate two persons, and from the names of the four persons so nominated shall be drawn by lot by any judge of any court of record in Texas, and the name so drawn shall be such third appraiser. The nominations from who the third appraiser is to be drawn by lot shall be submitted within ten (10) days the failure of the two appraisers to agree, which in any event shall not be later than twenty (20) days following the appointment of the

second appraiser. The decision of the appraisers as to the fair market value or in the case of their disagreement, the decision of the third appraiser, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owners. The sale shall be consummated within one hundred eighty (180) days thereafter, and the Association as attorney-in-fact, shall disburse such proceeds as is provided in this Article.

8.8 OBSOLESCENCE AND SALE

Subject to the approval of all First Mortgagees, all of the Owners of the Units then under construction or completed, may agree that the General Common Elements of the property are obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting for the such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such funds, without contribution from one fund to another, for the purposes and in the same order as is provided in this Article.

IX.

OPERATION DURING CONSTRUCTION, ETC.

Notwithstanding any other provision expressly or impliedly to the contrary in this Declaration, the Developer reserves the right to exercise the rights, duties, and functions of the Association, Board of Directors, or managing agent, until management of the Project has been transferred to the Owners as provided in Article IV, including the exclusive right and power to delegate to others and duties of the manager or managing agent, or both. The compensation or fee to be paid therefor shall be reasonable, and shall be a part of the Common Expenses. At the option of the Developer, at an earlier date, the Developer shall give written notice thereof to the Unit Owners, at which time the first meeting of the Association members shall be called as indicated earlier, and the powers herein held by the Developer by this Article IX shall be eliminated.

X

PROTECTION OF MORTGAGEE

10.1 NOTICE TO ASSOCIATION.

An Owner who mortgages his Unit shall notify the Association, giving the name and address of his Mortgagee. Each Mortgagee shall be permitted to notify the Association of the fact that such Mortgagee holds a deed of trust or mortgage on a Unit. The Board shall maintain a record of such information.

10.2 NOTICE OF DEFAULT.

The Association shall notify a First Mortgagee in writing, upon request of such Mortgagee, of any default by the Mortgagor in the performance of such Mortgagor's obligations as set forth in the Declaration which is not cured within thirty (30) days.

10.3 EXAMINATION OF BOOKS.

The Association shall permit First Mortgagees to examine the books and records of the Association upon request.

10.4 RESERVE FUND.

The Association shall establish adequate reserve funds, as hereinabove provided in Article 6.1, for replacement of Common Element components and the same shall be paid by an Owner in the monthly Assessment fund the same by regular monthly payments. In addition, there shall be established a non-refundable working capital fund for the initial operation of the Project equal to at least two (2) months estimated assessments for Common Expenses for each Unit, with said deposit to be collected at the initial closing or sale of each Unit.

10.5 ANNUAL AUDITS.

The Association shall furnish each First Mortgagee on request an annual unaudited financial statement of the Association within one hundred twenty (120) days following the end of each fiscal year of the Association.

10.6 NOTICE OF MEETINGS.

The Association shall furnish each First Mortgagee upon request of such Mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such Mortgagee to attend such meetings.

10.7 APPROVAL FOR AMENDMENTS TO DECLARATION, ETC.

The prior written approval of each First Mortgagee shall be required for the following:

- (a) Abandonment or termination of PORTOFINO HARBOUR DOCKOMINIUMS as a Condominium Regime, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (b) Any material amendment to the Declaration or to the By-laws of the Association; and
- (c) The Association may not alter or destroy a Unit or a Limited Common Element without the consent of all affected Owners and the First Mortgagees of all affected Owners.

10.8 NOTICE OF DAMAGE OR DESTRUCTION.

The Association shall furnish the First Mortgagees timely written notice of any substantial damage or destruction of any part of the Common Elements and facilities if such loss exceeds Ten Thousand Dollars (\$10,000.00).

10.9 MANAGEMENT AGREEMENTS.

Any management agreement and/or service contracts entered into by the Association shall be terminable by the Association with cause upon one hundred eighty (180) days written notice, and the term of such management agreement shall not exceed the period of three (3) years, and may be automatically renewable successive three (3) year periods. In the event of the termination of the management agreement, as provided herein, the Association may enter into a new management agreement with a new management corporation prior to the effective date of the termination of the old management agreement.

10.10 TAXES, ASSESSMENTS AND CHARGES.

All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

10.11 OTHER ACTS BY ASSOCIATION REQUIRING APPROVAL OF FIRST MORTGAGEES OR OWNERS:

Unless all of the First Mortgagees and Owners of the individual Units have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to any Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units or as otherwise provided in this Declaration. The Association may sell, convey, or encumber, all or a portion of the General Common Elements without obtaining prior written approval of all of the First Mortgagees.

XI.

TERMINATION AND REVOCATION

This Declaration may be revoked and the condominium terminated, only as provided herein:

(a) if such revocation and termination is approved by all Owners and all mortgagees. Such agreement must be evidenced by an instrument in writing and executed in a manner to provide for the conveyance of the property and as otherwise required by the Association. Such termination shall comply with the requirements set out in Article XI(d) below and shall become effective when the agreement has been recorded in the public records of the County of Galveston, State of Texas.

(b) if destruction should occur as indicated herein, and the property is not reconstructed as provided herein, the condominium form of ownership will be terminated and the documents herein will be revoked according to procedures provided by law and at the direction of the Board of Directors.

(c) except as otherwise provided herein, if such termination occurs, the Owners shall own their individual Units as earlier provided, and all Common Elements which are General Elements shall be owned as tenants in common and the Limited Common Elements shall be owned as tenancy-in-common between those who previously shared

the Limited Common Elements. Further, the holders of mortgages and liens against the owners properties shall have mortgages and liens respectively according to the undivided tenancy in common interest and the separate interest of the individual Owners. All funds and other property of the Association, including insurance proceeds, if any, shall be held by the Association to be distributed in proportion to the ownership shares after all other claims on said funds are paid as determined in the discretion of the Association. The costs incurred by the Association in connection with the termination and winding up of the condominium ownership shall be borne as a Common Expense.

(d) except as otherwise provided herein, following the termination, if any, of the condominium ownership, the Subject Property, including General and Limited Common Elements, may be partitioned and sold upon the application by any Owner to a court for such partition agreement. Further, if the Board of Directors determines that a termination of the Declaration and Association, including articles, By-Laws, and minutes, is most advantageous, and if such determination is ratified by the written consent of all the Owners of the Association, then the directors, upon unanimous vote by said directors, may seek out the means, terms, and provisions to seek sale of the property. However, such sale shall not work to the disadvantage of any parties who claim a lien on said property. Further, the determination as to any disposition of the condominium must be approved by all said parties holding mortgages or liens on any Unit. If the directors comply with the provision herein for such disposition of property, each Owner shall be bound to execute any documents, including deed, necessary or required by said directors to conform with their decision as to disposition of the condominium property and appoint the Managing Agent as agent and attorney-in-fact to execute such documents and consummate the sale.

XII.

MISCELLANEOUS

12.1 COMPLIANCE WITH DECLARATION

Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, By-Laws, rules, regulations and resolutions of the Association and any management agreement entered into by the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages, attorneys fees, or injunctive relief or both, maintainable by the Association in behalf of the Owners, or by an aggrieved Owner.

12.2 SEVERABILITY

If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, word or section, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, word or section in any other circumstances shall not be affected thereby.

12.3 AMENDMENT

003-45-0787

Except as permitted herein, none of the provisions of this Declaration shall be amended unless the Owners, at a meeting, representing an aggregate ownership interest of seventy-five percent (75%) of the Units, or more, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all Units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded; provided, however, that the foregoing shall not prevent the making of physical changes in the interior of a Unit or Units coming into the possession of a mortgagee by virtue of foreclosure of any first mortgage; and physical changes to and alterations of the Unit or Units owned by virtue of foreclosure of any first mortgage may be made without the consent of the other Owners or mortgagees and this Declaration may be amended without other Owners' or mortgagees' consent, by the Owner acquiring same by such foreclosure, to correspond with such physical changes; provided further, that the percentage of the undivided interest of each Unit Owner in Common Elements as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all of the Unit Owners expressed in an amended Declaration duly recorded, and those entities set forth in Article 10.7 hereof.

Developer reserves, and shall have the continuing right until November 1, 1987, without the joinder of Owner or any person or entity (whether or not Units have been conveyed) to supplement this Declaration or the By-Laws for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, and to meet any requirement specified by any secured or guaranteed mortgage or lending institution, agency or authority with an interest in any loan related to the Project, provided that no such Amendment shall change the stated number of Units nor the percentage interest in the Common Elements attributable thereto, nor materially adversely affect the interest of any Owner.

12.4 NOTICE

All notices, demands or other notices intended to be served upon an Owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such Owner in care of the Unit number and building address of such Owner. All notices, demands or other notices intended to be served upon the Managing Agent, or the Board of Directors of the Association or the Association shall be sent by ordinary or certified mail, postage prepaid to c/o Barry Snowden, 2200 West Loop South, Suite 225, Houston, Texas 77027, until such address is changed by a notice of address change duly recorded.

12.5 CONSTRUED UNDER LAWS OF TEXAS

The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Texas and to all other provisions of applicable law.

12.6 WORD CONSTRUCTION

That whenever used herein, unless the context shall otherwise provide, the singular number shall include the

plural the singular and the use of any gender shall include all genders.

EXECUTED on the date first above written.

PORTOFINO HARBOUR, LTD.
a Texas Limited Partnership

BY: GBR
A Texas General Partnership
as General Partner

BY: Bert B. Corkill
Bert B. Corkill
General Partner

BY: Glenn H. Clements
Glenn H. Clements
General Partner

THE STATE OF TEXAS

COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared Bert B. Corkill, General Partner of GBR, a Texas General Partnership, as General Partner of PORTOFINO HARBOUR, LTD., a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

Given under my hand and seal of office on this 30th day of October, 1984.

Bobbie Lynn Jackson
Notary Public, State of Texas

Bobbie Lynn Jackson
Printed Name of Notary Public

My Commission Expires: 6-15-85

THE STATE OF TEXAS

COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared Glenn H. Clements, General Partner of GBR, a Texas General Partnership, as General Partner of PORTOFINO HARBOUR, LTD., a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

Given under my hand and seal of office on this 30th day of October, 1984.



Bobbie Lynn Jackson
Notary Public, State of Texas

Bobbie Lynn Jackson
Printed Name of Notary Public

My Commission Expires: 6-15-85

Return To:

Barry Snowden
Morris, Tinsley & Snowden
2200 West Loop South
Suite 225
Houston, Texas 77027-3577
(713) 627-1520

X

JOINDER OF LIENHOLDER

The undersigned, AMERIWAY SAVINGS ASSOCIATION, being the owner and holder of an existing mortgage and lien upon and against the real property described in the foregoing Declaration of Condominium Regime ("Declaration") and defined as the "Property" in said Declaration, as such mortgagee and lienholder, does hereby consent to and join in said Declaration.

The consent and joinder shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and Units shall hereafter be upon and against each and all of the Units and all appurtenances thereto, and all of the undivided, equitable shares and interests in the Common Elements, subject to the said Condominium Regime.

SIGNED AND ATTESTED by the undersigned officers of AMERIWAY SAVINGS ASSOCIATION hereto authorized, this the 31 day of OCTOBER, 1984.

AMERIWAY SAVINGS ASSOCIATION

BY: *W. H. Hart*
Executive Vice President

ATTEST:

Rebecca Walla
Assistant Secretary

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared *Milby Hart*, Ex. Vice President of AMERIWAY SAVINGS ASSOCIATION, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 31 day of OCTOBER, 1984.

Danette Crocker
NOTARY PUBLIC, STATE OF TEXAS

Danette Crocker
Printed Name of Notary

My Commission Expires: 6/21/86



GROVES ROAD

CLEAR CREEK

SOUTHERN PACIFIC RAILWAY

PORTOFINO HARBOUR

DOCKOMINIUM

A SUBDIVISION OF TWO ACRES IN THE
M. GOULDROCK SURVEY, A-12
CALVERTON COUNTY, TEXAS

12 DOCS
212 SLIPS

OCT 29 1964

SCALE 1'-60'

[The page contains several columns of extremely faint, illegible text, likely bleed-through from the reverse side.]

Answer to Surveying Competency

