

Protective Covenants, Conditions
And Restrictions of Barrier Dunes

THIS DECLARATION, made and executed this 25th day of July, 1985, by BARRIER DUNES DEVELOPMENT CORPORATION, a Florida corporation with its principal place of business in Leon County, Florida, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant if the owner of certain property in Gulf County, Florida, which is more particularly described in Exhibit "A" attached hereto and by the reference made a part hereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above should be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties in any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Barrier Dunes Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain part of that real property hereafter described be brought within the jurisdiction of the association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Areas to be owned by the Association at the time of the conveyance of the first Lot consists of that property described in Exhibit 'A' attached hereto and by reference made a part hereof, less and except each of the Lots as hereinafter defined.

Section 5. Additional real property may be conveyed to the Association for the common use and enjoyment of the owners as the Properties are developed.

Section 6. "Lot" shall mean and refer to each numbered plot of land depicted on the plat attached hereto as Exhibit "A" and by reference made a part hereof.

Section 7. "Declarant" shall mean and refer to BARRIER DUNES DEVELOPMENT CORPORATION, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II PROPERTY RIGHTS

- Section 1. Owners' Easements of Enjoyment. Every Owner shall have right and easement of enjoyment in and to the common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provision:
- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
 - (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed 60 days for any infraction of its published rules and regulations;
 - (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members (no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded); and
 - (d) the right of individual Owners to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

- Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.
- Section 2. The Association shall have two classes of voting membership:
- Class A: Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) upon the expiration of five (5) years from the date of the recording of this Declaration, whichever later occurs.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and insurance coverage, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the common Area of the homes situated upon the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be \$900.00 per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above 5% by a

vote of two-thirds of each class members who are voting in person by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may increase the annual assessment at any time to an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements and Insurance. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. The Association may further levy, in any assessment year, a special assessment to cover the cost of any master or blanket insurance policy obtained by the Association, subject to the terms of Article V hereof.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such Meeting, the presence of members or of proxies entitled to cast majority of all the votes of each class of membership shall constitute a quorum.

Section 6. Uniform Rate and of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots, except for provided in Article V hereof, and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessment. Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment according to the number of months remaining in the calendar year. The Board of Directors fix the months of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors- The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15) per annum or at such other legal rate may be established by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof or the bona fide conveyance to a mortgagee in satisfaction of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, local public authority and all properties owned by charitable or nonprofit organization exempt from taxation by the live of the State of Florida shall be exempt from the assessments created herein, except no land or improvement devoted to dwelling use shall be exempt from said assessments.

ARTICLE V INSURANCE

The Association may, after the approval of two-thirds (2/3) vote of the Board of Directors, obtain a master or blanket hazard insurance policy covering all improvements located on the Properties. The policy shall be held for the benefit of the Association, and each Owner owning an improved Lot and any mortgagee which has been named as an additional insured at the direction of an Owner who is a named insured under the policy. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to consent to the Association obtaining and maintaining such master or blanket Insurance and 18 further deemed to covenant and agree to pay his pro rata share of the costs of such insurance coverage. The master or blanket hazard insurance policy shall provide for payment of any insurance proceeds to the Association, Owners, and any mortgagee, at their interests may appear. Neither the Association, nor any other owner, shall have any interest in any insurance proceeds payable as a result of an Owner's improvements being destroyed by fire or other casualty. Such master, or blanket insurance policies may be obtained by the Association if they provide benefits not generally available under individual policies, of insurance or benefits at a lesser cost than generally available under individual policies of insurance. Any such insurance policy shall provide for at least ten (10) days' notice to any named insured or additional named insured; other than the Association, prior to any cancellation or termination.

ARTICLE VI EASEMENTS

Section 1. Easement for Encroachments. Each Lot shall be subject to an easement for encroachment created by construction, settling, and overhangs, as designed or

constructed by the Declarant or its designee. A valid easement for said encroachments and the maintenance of same, so long as it stands, shall and does exist. In the event a structure on a Lot is partially or totally destroyed, and then rebuilt, the owners of the properties so affected agree that minor encroachments of parts of the adjacent structures shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Easements of Ingress, Egress and Utilities. The Declarant hereby reserves, excepts, imposes, and creates non-exclusive cross-easements to and on behalf of the Declarant, the Owners, their grantees, heirs, and successors in interest for pedestrian walkways, utilities and ingress and egress over, across and under the Common Areas. Within this easement, no structure, improvement, planting or other material which may interfere with the use and purpose of the easement shall be pieced or permitted to remain. Additionally, within this easement, no structure, improvement, pleating, or other material shall be placed or permitted to remain without written approval by two-thirds (2/3) of the Board of Directors.

Section 3. Easement for telephone, electrical and cable television line. Each Lot shall be subject to an easement for the installation, repair, maintenance and replacement of telephone, electrical and cable television lines, facilities and equipment serving each Lot in any grouping of adjoining Lots. Such lines, facilities and equipment shall be located within the sub floor of the building located or to be located in the Lot in accordance with the original design plans and specifications for the building. In the event that a need for repair or replacement of such lines, facilities or equipment is caused through the willful or negligent act of the owner, or through the willful or negligent act of the family, guests or invitees, of an Owner, the cost of such repair or replacement shall be added to and become part of the assessment to which the Owner's Lot is subject and the Association shall effect such repair or replacement.

ARTICLE VII EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject. The Association shall further, after the approval by two-thirds (2/3) vote of the Board of Directors, provide for the collection and removal of household garbage and trash.

ARTICLE VIII ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, nor shall any tree, shrub, grass or other landscaping be placed or maintained on the properties, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures end topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any repairs or maintenance which will result in a materiel alteration of the exterior appearance of a residence (including, but not limited to, a change in the color of the exterior paint or stain) shall require prior approval of the Board or its architectural committee. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required end this Article VIII be deemed to have been fully complied with.

ARTICLE IX PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which Is built as a part of the original construction of the homes upon the Properties end pieced on the dividing line between the Lots shall constitute · part wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions Shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of · party wall shall be shared by the Owners whom make use of the wall in proportion to such use; provided, buyer, the foregoing shell relate only to the structural integrity of said wall and to such repair and maintenance as I* reasonably necessary to maintain such veil in a condition as is cause the same to serve the purpose for which It was intended.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right or any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner, who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary Protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be made by a majority of all the arbitrators.

ARTICLE X NUISANCE

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

ARTICLE XI TEMPORARY STRUCTURES

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, storage building, or other outbuilding shall be used on any lot at any time is a residence either temporarily or permanently.

ARTICLE XII SIGNS

No sign of any kind shall be displayed to the public view on any Lot unless the placement and display or signs are generally approved by the Board of Directors of the Association. Such approval shall be subject to being withdrawn at any time. In no event shall any sign be more than five square feet in size or for any purpose other than to advertise the property for sale or lease.

ARTICLE XIII LIVESTOCK AND POULTRY

NO animals, livestock or Poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

ARTICLE XIV RADIO AND TELEVISION ANTENNA

No exterior radio and television antenna may be installed on any portion of the Properties unless such installation and the size and design of the antenna have been approved by the

Board of Directors of the Association or an architectural control committee appointed by the Board.

ARTICLE XV MAIL BOXES

No mail box or paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar materials shall be erected or located on the Properties unless and until the size, location and type of material for said boxes or receptacles shall have been approved by the Board of Directors of the Association or an architectural control committee appointed by the Board.

ARTICLE XVI GARBAGE AND REFUSE DISPOSAL

No Lot shall be used, maintained, or allowed to become a dumping ground for scraps, litter, leaves, limbs or rubbish. Trash, garbage or other waste shall not be allowed to accumulate on the property and shall not be kept except in sanitary containers installed in such a manner to be acceptable to the Board of Directors of the Association or an architectural control committee appointed by the Board. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall not be visible from the street.

ARTICLE XVII PARKING RESTRICTIONS

No owner of a Lot shall park, store, or keep any vehicle except wholly within the parking space designated therefore, and no owner shall park, store, or keep any camper, boat, trailer, or aircraft, or any vehicle other than a private passenger vehicle on the designated parking spaces. No Owner of a Lot shall repair or restore any motor vehicle, boat, trailer, aircraft, or other vehicle on any portion of any Lot other than in an attached, enclosed garage or a carport with visual screens, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

ARTICLE XVIII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Notwithstanding the foregoing, the Declarant may amend the plat attached hereto.