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DECLARATION OF CONDOMINIUM
OF
BREAKERS WEST
A Condominium
Sanibel Island, Florida

MADE this 26th day of September, 1974, by Myton W. Ireland, joined by his wife, Daphne Ireland, hereafter called Developer, for himself, his successors, grantees and assigns,

WHEREIN the Developer makes the following declarations:

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

A. Name and Address. The name by which this condominium is to be identified is BREAKERS WEST, a condominium, and its address is Gulf Drive, Sanibel, Florida.

B. The Land. The land owned by Developer, which by this instrument are hereby submitted to the condominium form of ownership, are the following described lands lying in Lee County, Florida, to-wit:

The land described in attached "EXHIBIT A" which lands are called "the Land."

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

A. Assessment. Assessment means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner.

B. Apartment. Apartment is synonymous with "unit."

C. Association. Association means Breakers West Condominium Association, and its successors.

D. Common Elements. Common Elements means the portions of the Condominium property not included in the units, and which include the tangible personal property required for the maintenance and operation of the Condominium even though owned by the Association.

E. Common Expenses. Common Expenses means the expenses for which the unit owner is liable to the Association and includes:

(1) Expenses of administration; expenses of maintenance, operation, repair or replacement of the common elements, and of the portions of the apartments to be maintained by the Association.

(2) Expenses declared common expenses by provisions of the Declaration, the bylaws, or by proper resolution of the Association.

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

F. Common Surplus. Common Surplus means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues on account of the common elements, over the amount of common expenses.

G. Condominium. Condominium means all of the condominium property as a whole when the context so permits, as well as the condominium property.

H. Condominium Documents. Condominium Documents means this Declaration together with the following exhibits which are made a part hereof:

- (1) Exhibit "A" - Description of the land.
- (2) Exhibit "B" - Survey and Plot Plan of the land and buildings.
- (3) Exhibit "C" - Bylaws of Breakers West Condominium Association.
- (4) Exhibit "D" - Certificate of Surveyor.

I. Condominium Parcel. Condominium Parcel means a unit together with the undivided share of the common elements which is appurtenant to the unit.

J. Condominium Property. Condominium Property means the condominium land, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

K. Utility Services. Utility Services means as used in the Condominium Act and as construed with reference to this condominium, and as used in the Declaration and bylaws including, but not limited to, electric power, gas, hot and cold water, heating, refrigeration, air-conditioning and garbage and sewage disposal.

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

A. Survey. A survey and plot plan of the land showing the improvements on it is attached as Exhibit "B."

B. Amendment of Plans.

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

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

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

E. Improvement - General Description

(1) Apartment Building. The condominium includes an apartment building consisting of three floors containing eighteen owners' apartments.

(2) Other Improvements. The condominium includes gardens and landscaping, swimming pool, automobile parking areas and other facilities located substantially as shown upon the plans which are part of the common elements.

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

(1) Upper and Lower Boundaries. The upper and lower boundaries of the apartment shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(a) Upper Boundary. The horizontal plane of the lower surfaces of the ceiling slab;

(b) Lower Boundary. The horizontal plane of the lower surfaces of the floor slab.

(2) Perimetrical Boundaries. The perimetrical boundaries of the apartment shall be the following boundaries extended to an intersection with the upper and lower boundaries:

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

(b) Interior Building Walls. The vertical planes of the center line of walls bounding an apartment extended to intersections with other perimetrical boundaries with the following exceptions.

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

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

G. Common Elements. The common elements include the land and all other parts of the condominium not within the apartments.

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

A. Apartment Numbers. There are seven apartments upon each the first and second floors of the apartment building and four apartments on the third floor, totalling eighteen apartments. The apartments of the first floor are designated by the prefix "A", the apartments on the second floor by the prefix "B" and the apartments on the third floor by the prefix "C." The apartments will number consecutively from the North 1 through 7 on the first and second floors and 1 through 4 on the third floor, the ground floor apartment on the North being Apartment A-1 and the third floor apartment on the South being C-4.

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

(1) Common Elements and Common Surplus. The undivided share in the land and other common elements and in the common surplus which are appurtenant to each apartment is as follows:

An undivided 1/18th share to each apartment.

(2) Automobile Parking Space. The common elements include parking areas for automobiles of the apartment owners. Parking areas will not be assigned but will be available for use pursuant to the regulations of the Association, which regulations shall provide that the occupants of each apartment shall be entitled to parking without charge.

(3) Association Membership. The membership of each apartment owner in the Association and the interest of each apartment owner in the funds and assets held by the Association.

(4) Easements. The Developer, being the fee simple owner of lands contiguous to the condominium property, hereby grants a perpetual non-exclusive 5 ft. wide walkway easement running from the southwesterly corner of the condominium property as shown on the Survey and Plot Plan annexed hereto as Exhibit B to the waters of the Gulf of Mexico.

C. Liability for Common Expenses. Each apartment owner shall be liable for a proportionate share of the common expenses, such share being the same as the undivided share in the common elements appurtenant to his apartment.

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

A. Apartments.

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

(a) All portions of an apartment, except interior surfaces, contributing to the support of the apartment building, which portions shall include but not be limited to the outside walls of the apartment building and all fixtures on its exterior, boundary walls of apartments, floor and ceiling slabs, loadbearing columns and loadbearing walls;

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

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

(2) By the Apartment Owner. The responsibility of the apartment owner shall be as follows:

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

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

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

(3) Alteration and Improvement. Except as elsewhere reserved to Developer, neither an apartment owner nor the Association shall make any alteration in the portions of an apartment or apartment building that are to be maintained by the Association, or remove any portion of such, or make any additions to them, or do anything that would jeopardize the safety or soundness of the apartment building, or impair any

easement, without first obtaining approval in writing of owners of the apartments in which such work is to be done and the approval of the Board of Directors of the Association. A copy of the plans for all such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of the work.

B. Common Elements.

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

(2) Alteration and Improvement. After the completion of the improvements included in the common elements contemplated by this Declaration, there shall be no alteration nor further improvement of common elements without prior approval in writing by the record owners of all of the apartments; provided, however, that any alteration or improvement of the common elements bearing the approval in writing of the record owners of not less than 75% of the common elements, and which does not interfere with the rights of any owners without their consent, may be done if the owners who do not approve are relieved from the initial cost of such alteration or improvement. The share of any cost not so assessed shall be assessed to the other apartment owners in the shares that their shares in the common elements bear to each other. There shall be no change in the shares and rights of an apartment owner in the common elements altered or further improved, whether or not the apartment owner contributes to the cost of such alteration or improvement.

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

A, Share of Common Expenses. Each apartment owner shall be liable for a proportionate share of the common expenses, and shall share in the common surplus, such shares being the same as the undivided share in the common elements appurtenant to the apartment owned by him.

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

C. Lien for Assessments. The lien for unpaid assessments shall also secure reasonable attorneys' fees incurred by the Association incident to collection of such assessment or enforcement of such lien.

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

7. Association. The operation of the condominium shall be by an unincorporated association pursuant to the Condominium Act, which shall be organized and shall fulfill its functions pursuant to the following provisions:

A. Name. The name of the Association shall be Breakers West Condominium Association.

B. Powers. The Association shall have all of the powers and duties set forth in the Condominium Act, except as limited by this Declaration and the Bylaws, and all of the powers and duties reasonably necessary to operate the condominium as set forth in this Declaration and the Bylaws and as they may be amended from time to time. Until such time as the Condominium Association shall be assumed by the unit owners, the Developer may conduct the administration and management and shall have all of the powers, authorities and exemptions herein granted to the Association. So long as the Developer shall own one or more units in the common developmental scheme known as Breakers West, the Developer shall have the right to elect or appoint a majority of the board of administration.

C. Members.

(1) Qualifications. The members of the Association shall consist of all of the record owners of apartments in the condominium; and after termination of the condominium shall consist of those who are members at the time of such termination and their successors and assigns.

(2) Change of Membership. After receiving approval of the Association, required by the Declaration of Condominium, change of membership in the Association shall be established by recording in the public records of Lee County, Florida, a deed or other instrument establishing a record title to an apartment in the condominium and the delivery to the Association of a certified copy of such instrument. The owner designated by such instrument becomes a member of the Association and the membership of the prior owner is terminated.

(3) Voting Rights. There shall be one vote for each apartment, irrespective of the number of owners of an apartment.

(4) Designation of Voting Representative. If an apartment is owned by one person his right to vote shall be established by the record title to his apartment. If an apartment is owned by more than one person, or is under lease, the person entitled to cast the vote for the apartment shall be designated by a certificate signed by all of the record owners of an apartment and filed with the secretary of the Association. If an apartment is owned by a corporation, the person entitled to cast the vote for the apartment shall be designated by a certificate signed by the president or vice-president and attested by the secretary or assistant-secretary of the corporation and filed with the secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the apartment concerned. A certificate designating the person entitled to cast the vote of an apartment may be revoked by any owner of an apartment. If such a certificate is not on file, the vote of such owner shall not be considered in determining the requirement for a quorum for any other purpose.

D. Board of Directors. The affairs of the Association shall be conducted by a board consisting of the number of directors determined by the Bylaws, but not less than three directors, and in the absence of such determination shall consist of five directors. Directors shall be designated in the manner provided in the Bylaws.

E. Indemnification. Every director and every officer of the Association shall be indemnified by the Association against all expenses, and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding or any settlement of any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association, whether or not he is a director or officer at the time such expenses are incurred, except when the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approved such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition and not exclusive of all other rights to which such Director or officer may be entitled.

F. Bylaws. The operation of the condominium shall be governed by the Bylaws attached hereto as EXHIBIT C and as may hereafter be amended.

G. Agent to Receive Service of Process. The following person, who is a resident of the State of Florida, is designated as agent to receive service of process upon the Association:

Name: Myton W. Ireland

Address: Gulf Drive, Sanibel, Florida

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

A. Authority to Purchase; Named Insured. All insurance policies upon the condominium property shall be purchased by the Association, or by the Developer in the event the Association shall not have been activated. Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of apartment owners. Such policies and their endorsements shall be deposited with the Insurance Trustee. Apartment owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expenses.

B. Coverage.

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

(a) Loss or Damage by fire and other hazards covered by a standard extended coverage endorsement, and

(b) Such Other Risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

(2) Public Liability. In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverages, and with cross-liability endorsement to cover liabilities of the apartment owners as a group to an apartment owner.

(3) Workmen;s Compensation policy to meet the requirements of law.

(4) Other Insurance. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

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

D. Insurance Trustee; Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Barnett Bank of Fort Myers, N.A.

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

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

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

(b) When the Building is not to be Restored an undivided share for each apartment owner, such share being the same as the undivided share in the common elements appurtenant to his apartment.

(3) Mortgagees. In the event a mortgagee endorsement has been issued as to an apartment, the share of the apartment owner shall be held in trust for the mortgagee and the apartment owner as their interests may appear; provided however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the apartment owner and mortgagee pursuant to the provisions of this Declaration.

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

(1) Expense of the Trust. All expenses of the Insurance Trustee shall be paid first or provision made for such payment.

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

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by such mortgagee.

(4) Certificate. In making distribution to apartment owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the apartment owners and their respective shares of the distribution.

F. Association as Agent. The Association is irrevocable appointed agent for each apartment owner and for each owner of a mortgage or other lien upon an apartment and for each owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

9. Reconstruction or Repair After Casualty. If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

A. Common Element. If the damaged improvement is a common element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

B. Apartment Building.

(1) Lesser Damage. If the damaged improvement is the apartment building, and if apartments to which 50% of the common elements are appurtenant are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within 60 days after the casualty it is determined by agreement in the manner elsewhere provided that the condominium is to be terminated.

(2) Major Damage. If the damaged improvement is the apartment building, and if apartments to which more than 50% of the common elements are appurtenant are found by the Board of Directors to be not tenantable, then the damaged property will not be reconstructed or repaired and the condominium will be terminated without agreement as elsewhere provided, unless within 60 days after the casualty the owners of 75% of the common elements agree in writing to such reconstruction or repair.

(3) Certificate. The Insurance Trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

C. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached as exhibits; or if not then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the apartment building, by the owners of not less than 75% of the common elements, including the owners of all damaged apartments, which approval shall not be unreasonably withheld.

D. Responsibility. If the damage is only to those parts of one apartment for which the responsibility of maintenance and repair is that of the apartment owner, then the apartment owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

E. Estimates of Costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

F. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the apartment owners who own the damaged apartments, and against all apartment owners in case of damage to common elements, in sufficient amounts to provide funds for the payment of such cost. Such assessments against apartment owners for damage to apartments shall be in proportion to the cost of reconstruction and repair of their respective apartments. Such assessments on account of damage to common elements shall be in proportion to the owner's share in the common elements.

G. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against apartment owners shall be disbursed in payment of such costs in the following manner:

(1) Association. If the total of assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair that is the responsibility of the Association is more than \$5,000.00, then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee. In all other cases the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.

(2) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from

collections of assessments against apartment owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) Association-Lesser Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than \$5,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(b) Association-Major Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is more than \$5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors for the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work-

(c) Apartment Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an apartment owner shall be paid by the Insurance Trustee to the apartment owner, or if there is a mortgagee endorsement as to the apartment, then to the apartment owner and the mortgagee jointly, who may use such proceeds as they may be advised.

(d) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(e) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether or not sums paid by the apartment owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount paid. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to any or all of such matters, and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required in this instrument to be made as payee, the Insurance Trustee shall also

name the mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so required, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of cost of reconstruction and repair.

10. Use Restrictions. The use of the condominium property shall be in accordance with the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land.

A. Apartments. Each of the apartments shall be occupied only by a family, its servants and guests, as a residence and for no other purpose. Except as reserved to Developer, no apartment may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred without first amending this Declaration to show the changes in the apartments to be effected.

B. Common Elements. The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the apartments.

C. Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the condominium shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or make any use of the common elements that will increase the cost of insurance upon the condominium property.

D. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

E. Leasing. After approval by the Association elsewhere required, entire apartments may be rented provided the occupancy is only by the lessee and his family, its servants and guests. No rooms may be rented except as a part of an apartment or to another apartment owner.

F. Regulations. Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by the Association in the manner provided by its Bylaws. Copies of such regulations and amendments shall be furnished by the Association to all apartment owners and residents of the condominium upon request.

G. Proviso. Provided, however, that until Developer has completed all of the contemplated improvements and closed the sales of all of the apartments of the condominium, neither the apartment owners nor the Association nor the use of the condominium property shall interfere with the completion of the contemplated improvements and the sale of the apartments.

Developer may make such use of the unsold units and common areas as may facilitate such completion and sale, including but not limited to maintenance of a sales office, the showing of the property and the display of signs.

11. Maintenance of Community Interests. In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the apartments, the transfer of apartments by any owner other than the Developer shall be subject to the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land, which provisions each apartment owner covenants to observe.

A. Transfers Subject to Approval.

(1) Sale. No apartment owner may dispose of an apartment or any interest in an apartment by sale without approval of the Association except to an apartment owner.

(2) Lease. No apartment owner may dispose of an apartment or any interest in an apartment by lease without approval of the Association except to an apartment owner.

(3) Gift. If any apartment owner shall acquire his title by gift, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

(4) Devise or Inheritance. If any apartment owner shall acquire his title by devise or inheritance, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

(5) Other Transfers. If any apartment owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

B. Approval by Association. The approval of the Association that is required for the transfer of ownership of apartments shall be obtained in the following manner:

(1) Notice to Association.

(a) Sale. An apartment owner intending to make a bona fide sale of his apartment or any interest in it shall give to the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice at the apartment owner's option may include a demand by the apartment owner that the Association furnish a purchaser of the apartment if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.

(b) Lease. An apartment owner intending to make a bona fide lease of his apartment or any interest in it shall give to the Association notice of such intention together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require and an executed copy of the proposed lease.

(c) Gift; Devise or Inheritance; Other Transfers. An apartment owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Association notice of the acquiring of his title, together with such information concerning the apartment owner as the Association may reasonably require, and a certified copy of the instrument evidencing the owner's title.

(d) Failure to Give Notice. If the above required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of an apartment, the Association at its election and without notice may approve or disapprove the transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed as it it had received the required notice on the date of such disapproval.

(2) Certificate of Approval.

(a) Sale. If the proposed transaction is a sale, then within 30 days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president or vice president and secretary or assistant secretary of the Association, which shall be recorded in the public records of Lee County, Florida, at the expense of the apartment owner.

(3) Approval of Corporate Owner or Purchaser.

Inasmuch as the condominium may be used only for residential purposes and a corporation cannot occupy an apartment for such use, if the apartment owner or purchaser of an apartment is a corporation, the approval of ownership by the corporation may be conditioned by requiring that all persons occupying the apartment be approved by the Association.

C. Disapproval by Association. If the Association shall disapprove a transfer or ownership of an apartment, the matter shall be disposed of in the following manner:

(1) Sale. If the proposed transaction is a sale and if the notice of sale given by the apartment owner shall so demand, then within thirty days after receipt of such notice and information the Association shall deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by the Association who will purchase the apartment upon the following terms:

(a) At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(b) The purchase price shall be paid in cash.

(c) The sale shall be closed within 30 days after the delivery or mailing of the agreement to purchase, or within ten days after the determination of the sale price if such is by arbitration, whichever is the later.

(d) A certificate of the Association executed by its president or vice-president and secretary or assistant secretary and approving the purchaser shall be recorded in the public records of Lee County, Florida, at the expense of the purchaser.

(2) Lease. If the proposed transaction is a lease, the apartment owner shall be advised of the disapproval in writing and the lease shall not be made.

(3) Gifts; Devise or Inheritance; Other Transfers. If the apartment owner giving notice has acquired title by gift, devise or inheritance, or in any other manner; then within 30 days after receipt from the apartment owner of the notice and information required to be furnished, the Association shall deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by the Association who will purchase and to whom the apartment owner must sell the apartment upon the following terms:

(a) The sale price shall be a fair market value determined by agreement between the seller and the purchaser within 30 days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisal of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(b) The purchase price shall be paid in cash.

(c) The sale shall be closed within ten (10) days following the determination of the sale price.

(d) A certificate of the Association executed by its president or vice-president and secretary or assistant secretary and approving the purchaser shall be recorded in the public records of Lee County, Florida, at the expense of the purchaser.

(e) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Lee County, Florida, at the expense of the apartment owner.

D. Mortgage. No apartment owner may mortgage his apartment nor any interest in it without the approval of the Association except to a bank, life insurance company or a savings and loan association, or to a vendor to secure a portion or all of the purchase price. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld.

E. Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company or savings and loan association that acquires its title as the result of owning a mortgage upon the apartment concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such provisions apply to a transfer, sale or lease by a bank, life insurance company or savings and loan association that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to an apartment at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

F. Unauthorized Transactions. Any sale, mortgage or lease not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

12. Compliance and Default. Each apartment owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Bylaws and Regulations adopted pursuant to those documents, and all of such as they may be amended from time to time. Failure of an apartment owner to comply with such documents and regulations shall entitle the Association, or other apartment owners to the following relief in addition to the remedies provided by the Condominium Act.

A. Negligence. An apartment owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. An apartment owner shall pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy or abandonment of an apartment or its appurtenances, or of the common elements, by the apartment owner.

B. Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of an apartment owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the Bylaws, or the Regulations adopted pursuant to them, and the documents and Regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

C. No Waiver of Rights. The failure of the Association or any apartment owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Bylaws or the Regulations shall not constitute a waiver of the right to do so thereafter.

13. Amendments. Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

A. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

B. A Resolution for the adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

(1) Not less than 75% of the entire membership of the Board of Directors and not less than 75% of the votes of the entire membership of the Association; or

(2) Not less than 80% of the votes of the entire membership of the Association, or

(3) Until the first election of directors, only by all of the directors, provided the amendment does not increase the number of apartments nor alter the boundaries of the common elements.

C. Proviso. Provided, however, that no amendment shall discriminate against any apartment owner nor against any apartment or class or group of apartments, unless the apartment owners so affected shall consent; and no amendment shall change any apartment nor the share in the common elements appurtenant to it, nor increase the owner's share of the common expenses, unless the record owner of the apartment concerned and all record owners of mortgages on such apartment shall join in the execution of the amendment. Neither shall an amendment make any change in the section entitled "Insurance" nor in the section entitled "Reconstruction or Repair After Casualty" unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment.

D. Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the public records of Lee County, Florida.

14. Termination. The condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act:

A. Destruction. If it is determined in the manner elsewhere provided that the apartment building shall not be reconstructed because of major damage, the condominium plan of ownership will be terminated without agreement.

B. Agreement. The condominium may be terminated at any time by the approval in writing of all record owners of apartments and all record owners of mortgages on apartments. If the proposed termination is submitted to a meeting of the

members of the Association, the notice of the meeting giving notice of the proposed termination, and if the approval of the owners of not less than 75% of the common elements, are obtained in writing not later than 30 days from the date of such meeting, then the approving owners shall have an option to buy all of the apartments of the other owners for the period ending on the 60th day from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approvals shall be irrevocable. The option shall be upon the following terms:

(1) Exercise of Option. The option shall be exercised by delivery or mailing by registered mail to each of the record owners of the apartments to be purchased, an agreement to purchase signed by the record owners of apartments who will participate in the purchase. Such agreement shall indicate which apartments will be purchased by each participating owner and shall require the purchase of all apartments owned by owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

(2) Price. The sale price for each apartment shall be the fair market value determined by agreement between the seller and purchaser within thirty days from the delivery or mailing of such agreement, and in the absence of agreement as to price it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association, who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(3) Payment. The purchase price shall be paid in cash.

(4) Closing. The sale shall be closed within ten days following the determination of the sale price.

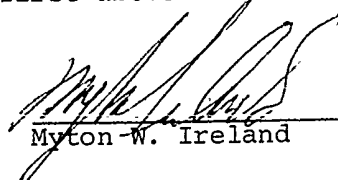
C. Certificate. The termination of the condominium in either of the foregoing manners shall be evidenced by a certificate of the association executed by its president and secretary certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Lee County, Florida.

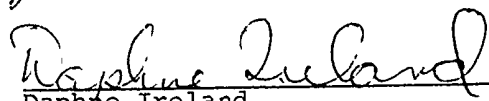
D. Shares of Owners after termination of the condominium property and all assets of the Association as tenants in common in undivided shares that shall be the same as the undivided shares in the common elements appurtenant to the owner's apartment prior to the termination.

E. Amendment. This section concerning termination cannot be amended without consent of all apartment owners and of all record owners of mortgages upon the apartments.

15. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Condominium and Bylaws and Regulations of the Association shall not affect the validity of the remaining portions.

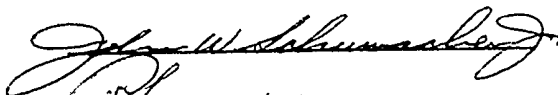
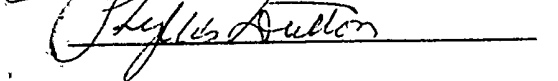
IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.


Myton W. Ireland


Daphne Ireland

DEVELOPER

Signed, sealed and delivered
in the presnce of:

STATE OF FLORIDA

COUNTY OF LEE

Before me personally appeared MYTON W. IRELAND, joined by his wife, DAPHNE IRELAND, to me well known and known to me to be the persons described in and who executed the foregoing Declaration of Condominium, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 26th day of September 1974.


Notary Public

My Commission Expires:
7-7-78



EXHIBIT "A"DESCRIPTION OF LAND

A tract or parcel of land being known as part of Lot 5 and 6 as shown on a plat entitled "E. L. Sawyers Subdivision" according to the plat recorded in Plat Book 3 at page 55 of the public records of Lee County, Florida, and lying in Section 34, Township 46 South, Range 22 East, Sanibel Island, Lee County, Florida, which tract or parcel is described as follows:

Beginning at a point where the division line between Lot 4 and 5 of said Sawyers Subdivision intersects the southwesterly side of Gulf Drive (80 feet wide) which is marked with a concrete monument, run southeasterly along the southwesterly right-of-way line of Gulf Drive for 184.88 feet; thence deflect to the right $66^{\circ}04'$ and run 15.00 feet; thence deflect to the left $90^{\circ}00'$ and run 10.00 feet to a point that is 21.00 feet (as measured on a perpendicular) from the easterly lot line of Lot 6; thence deflect to the right $90^{\circ}00'$ and run southerly on a line parallel to and 21.00 feet west of said easterly line 173.76 feet; thence deflect to the right $90^{\circ}00'$ and run 80.00 feet; thence deflect to the left $90^{\circ}00'$ and run 42.00 feet; thence deflect to the right $90^{\circ}00'$ and run 99.00 feet to the west line of said Lot 5; thence deflect to the right $90^{\circ}00'$ and run along the division line between Lot 4 and 5 305.76 feet to the point of beginning.

Together with a non-exclusive walkway easement 5 feet wide lying 5 feet east of and adjacent to the west line of said Lot 5 and running from the southwesterly corner of the above described parcel to the Gulf of Mexico.

SHEET 1 of 1

***SURVEYOR'S PLAT, EXHIBIT "B" TO CONDOMINIUM DECLARATION OF
BREAKERS WEST***

PARCEL IN GOVERNMENT LOT 2, SECTION 34 T.46S., R.22E.
SANIBEL ISLAND, LEE COUNTY, FLORIDA

JOHNSON ENGINEERING INC.
CIVIL ENGINEERS & LAND SURVEYORS
FORT MYERS, FLORIDA
AUGUST, 1974

A tract or parcel of land being known as part of lot 5 and 6 as shown on a plat entitled E. L. Sowyers Subdivision according to a plat recorded in Plat Book 3, Page 55 of the public records of Lee County, Florida and lying in Section 29, Township 46 South Range 22 East, Sanibel Island, Lee County Florida which tract or parcels is described as follows:

Designating a point where the division line between lot 4 and 5 of said Swampy Subdivision intersects the southwestly side of Gulf Drive (60 feet wide), which is marked with a concrete monument, run southeasterly along the westerly right-of-way line of Gulf Drive for 184.88 feet, thence offset to the north 15.00 feet, thence easterly to the left 30.00 feet and run 10.00 feet, thence to the left 15.00 feet measured to the perpendicular from the existing lot line of said lot 4, thence to the right 30.00 feet run southerly on a bearing of $S 89^{\circ} 52' 00'' E$ for 117.78 feet, thence to the right 15.00 feet, thence parallel to the right 30.00 feet for 210 feet, thence to the right 30.00 feet and run 80.00 feet, thence to the right 30.00 feet and run 80.00 feet, thence to the right 30.00 feet and run along the west line of said lot 5, thence easterly to the right 30.00 feet and run along the division line between lot 4 and 5 365.78 feet to the point of beginning together with a non-exclusive Halfway Eastman's 5 feet wide lying 5 feet east and easterly to the west line of said lot 5 and running from the south-westerly corner of the above described parcel to the Gulf of Mexico.

Common elements shall include the tangible or intangible personal property required for the maintenance and operation of the condominium together with all other elements as designated in the Florida Condominium Act, and all other elements necessary for the common maintenance, solely and wholly of the condominium owners.

This Surveyor's Plot and exhibit together with the wording of the declaration are a correct representation of the improvements described and there can be determined therefrom the individualization, dimensions and the site of the common elements and of each unit

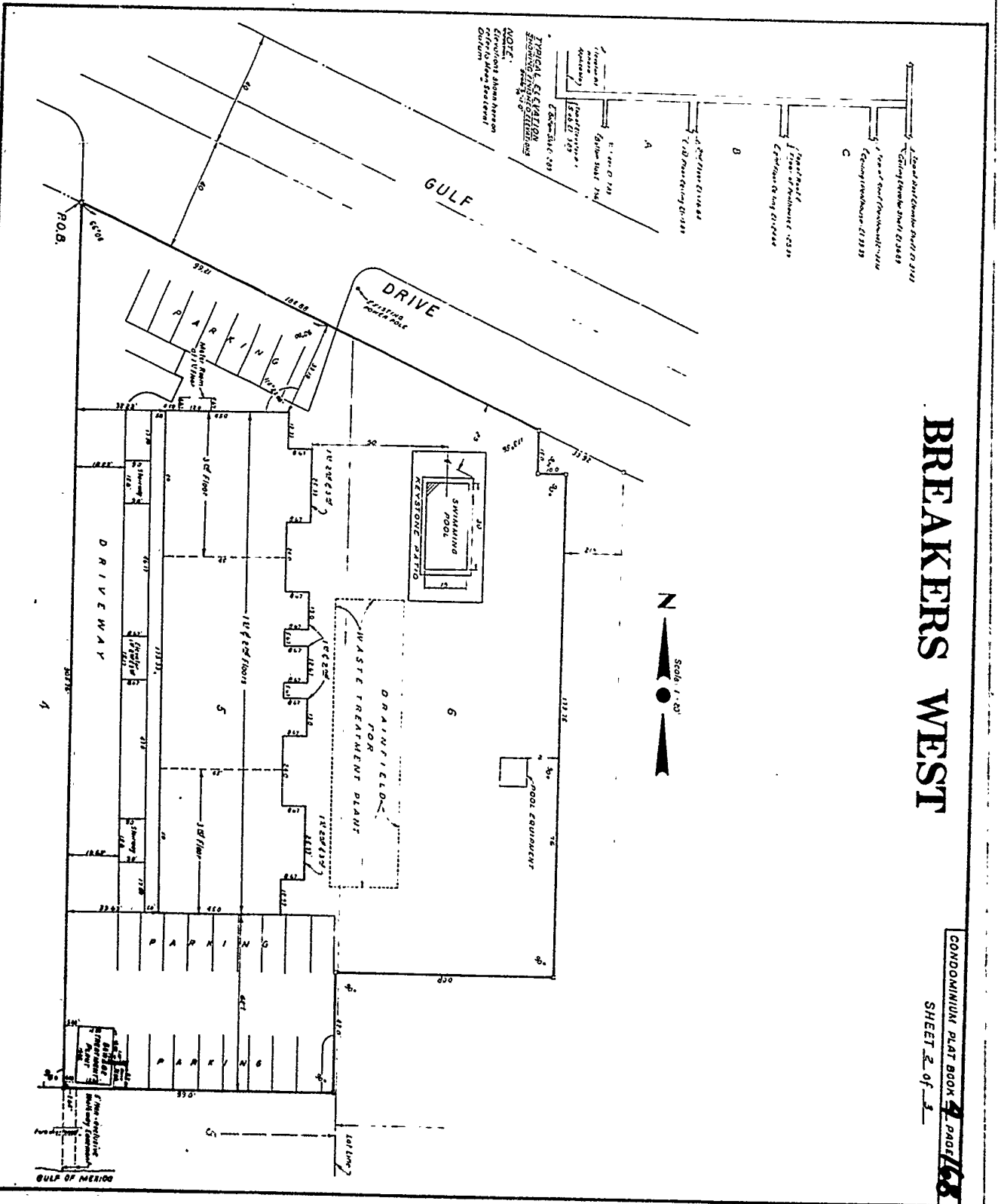
Certified to 23rd day of Sept. 1974

This 23rd day of Sept. 1974
Robert S. O'Brien
Professional Land Surveyor
Florida Certificate No. 22,35



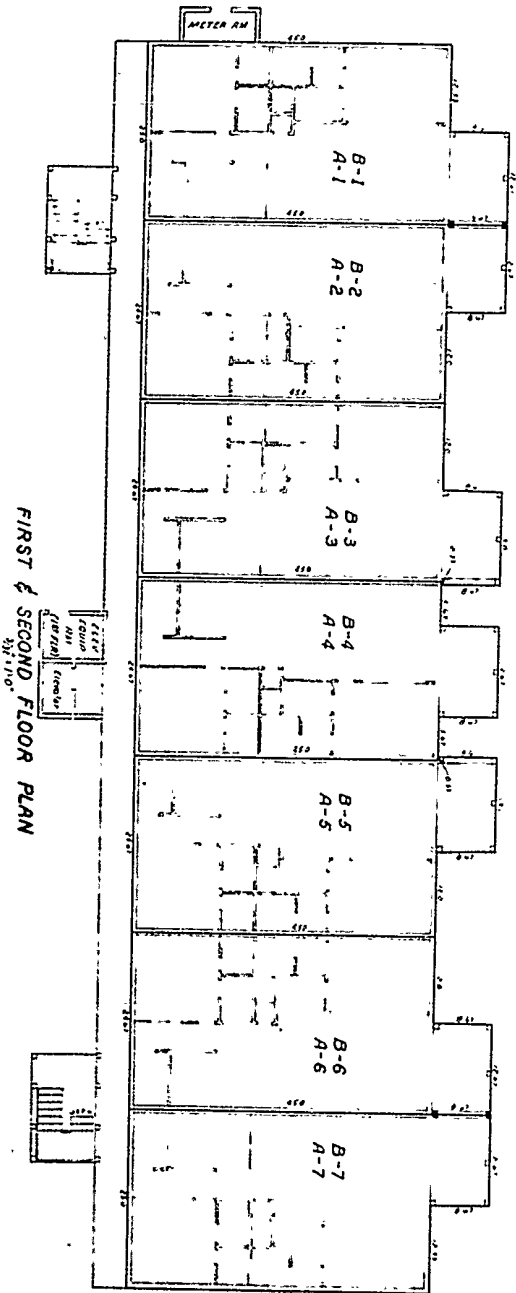
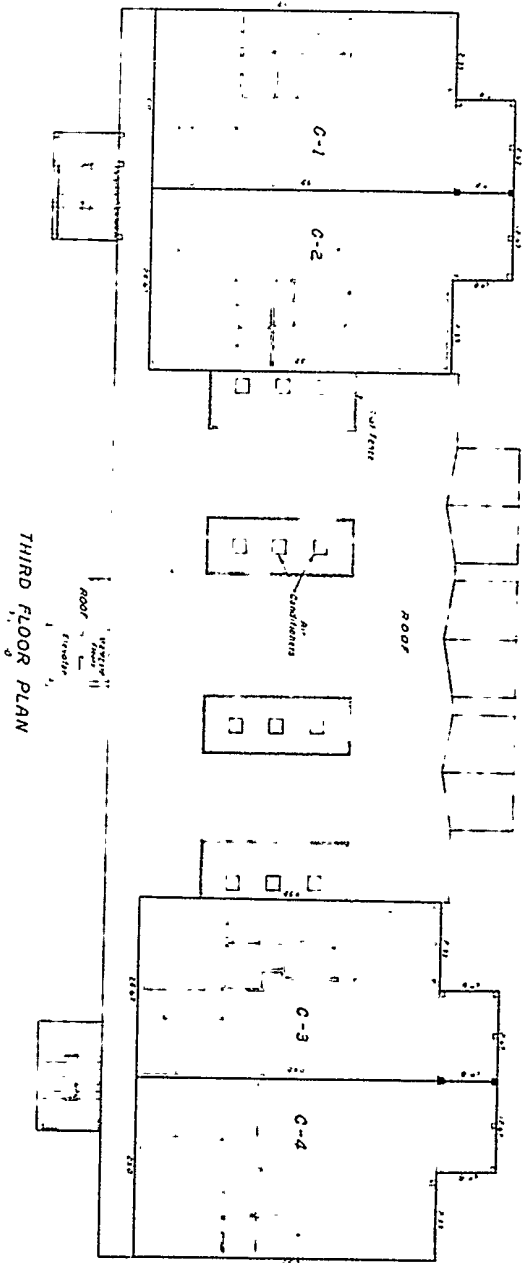
BREAKERS WEST

CONDOMINIUM PLAT BOOK 4 PAGE 168
SHEET 2 of 3



BREAKERS WEST

CONDOMINIUM PLAT BOOK 4 PAGE 169
SHEET 3 of 3



BYLAWS OF
BREAKERS WEST CONDOMINIUM ASSOCIATION

1. IDENTITY. These are the Bylaws of Breakers West Condominium Association, called Association in these Bylaws. The Association has been organized for the purpose of administering a condominium pursuant to Chapter 711, Florida Statutes 1963, called the Condominium Act in these Bylaws, which condominium is identified by the name BREAKERS WEST, a Condominium, and is located on Gulf Drive, Sanibel Island, Florida.

A. The Office of the Association shall be on Sanibel Island, Florida.

B. The Fiscal Year of the Association shall be the calendar year.

2. MEMBERS' MEETINGS.

A. The Annual Members' Meeting shall be held at the office of the corporation at 8:00 o'clock P.M. Eastern Standard Time, on the second Tuesday in February of each year for the purpose of electing directors and transacting any other business authorized to be transacted by the members; provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the next day that is not a holiday.

B. Special Members' Meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from members entitled to cast one-third of the votes of the entire membership.

C. Notice of All Members' Meetings stating the time and place and objects for which the meeting is called shall be given by the President or Vice President or Secretary unless waived in writing. Such notice shall be in writing to each member at his address as it appears on the books of the Association and shall be mailed not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived before or after meetings.

D. A Quorum at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership. The acts approved by a majority of the votes present at such meeting at which a quorum is present shall constitute the acts of the members, except when approval by a greater number of members is required by the Declaration of Condominium or these Bylaws.

E. Voting. There shall be one vote for each apartment, irrespective of the number of owners of an apartment.

(1) Designation of Voting Representative. If an apartment is owned by one person his right to vote shall be established by the record title to his apartment. If an apartment is owned by more than one person, or is under lease, the person entitled to cast the vote for the apartment shall be designated by a certificate signed by all of the record owners of an apartment and filed with the Secretary

of the Association. If an apartment is owned by a corporation, the person entitled to cast the vote for the apartment shall be designated by a certificate signed by the President or Vice President and attested by and filed with the Secretary of the Association. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the apartment concerned. A certificate designating the person entitled to cast the vote of an apartment may be revoked by any owner of an apartment. If such a certificate is not on file, the vote of such owner shall not be considered in determining the requirements for a quorum nor for any other purpose.

F. Proxies. Votes may be cast in person or by proxy. A proxy may be made by a person entitled to vote and shall be valid only for the particular meeting designated in the proxy and must be filed with the Secretary before the appointed time of the meeting or any adjournment of the meeting.

G. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

H. The Order of Business at annual members' meeting and as far as practical at other members' meetings shall be:

- (1) Election of chairman of the meeting.
- (2) Calling of the roll and certifying of proxies.
- (3) Proof of notice of meeting or waiver of notice.
- (4) Reading and disposal of any unapproved minutes.
- (5) Report of officers.
- (6) Report of committees.
- (7) Election of inspectors of election.
- (8) Election of directors.
- (9) Unfinished business.
- (10) New business.
- (11) Adjournment.

I. Proviso. Provided, however, that until the Developer of the condominium has completed all of the contemplated improvements and closed the sales of all of the apartments of the condominium or until October 1, 1979, or until the Developer elects to terminate its control of the condominium, whichever shall first occur, the proceedings of all meetings of members of the Association shall have no effect unless approved by the board of directors.

3. DIRECTORS.

A. Membership. The affairs of the Association shall be managed by a board of not less than three nor more than five directors, the exact number to be determined at the time of election.

B. Election of Directors shall be conducted in the following manner:

(1) Election of directors shall be held at the annual members' meeting.

(2) A nominating committee of two (2) members shall be appointed by the board of directors not less than thirty (30) days prior to the annual members' meeting. The committee shall nominate one person for each director then serving. Nomination for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

(3) The election shall be by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

(4) Except as to vacancies provided by removal of directors by members, vacancies in the board of directors occurring between annual meetings of members shall be filled by the remaining directors.

(5) Any director may be removed by concurrence of two-thirds of the votes of the entire membership at a special meeting of the members called for that purpose. The vacancy in the board of directors so created shall be filled by the members of the Association at the same meeting.

(6) Provided, however, that until the Developer of the condominium has completed all of the contemplated improvements and closed the sales of all of the apartments, or until October 1, 1979, or until Developer elects to terminate its control of the condominium, whichever shall first occur, the first directors of the Association shall serve, and in the event of vacancies the remaining directors shall fill the vacancies, and if there are no remaining directors, the vacancies shall be filled by the Developer.

C. The Term of each director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

D. The Organization Meeting of a newly-elected board of directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary.

E. Regular Meetings of the board of directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegraph, at least three days prior to the day named for such meeting.

F. Special Meetings of the directors may be called by the President and must be called by the Secretary at the written request of one-third of the directors. Not less than three days' notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

G. Waiver of Notice. Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

H. A Quorum at directors' meeting shall consist of a majority of the entire board of directors. The act approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the board of directors, except when approval by a greater number of directors is required by the declaration of condominium or these Bylaws.

I. Adjourned Meetings. If at any meeting of the board of directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.

J. Joinder in Meeting by Approval of Minutes. The joinder of a director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of each director for the purpose of determining a quorum.

K. The Presiding Officer of directors' meetings shall be the chairman of the board if such an officer has been elected; and if none, the President shall preside. In the absence of the presiding officer the directors present shall designate one of their number to preside.

L. The Order of Business at directors' meetings shall be:

- (1) Calling of roll.
- (2) Proof of due notice of meeting.
- (3) Reading and disposal of any unapproved minutes.
- (4) Reports of officers and committees.
- (5) Election of officers.
- (6) Unfinished business.
- (7) New business.
- (8) Adjournment.

M. Directors' Fees, if any, shall be determined by the members.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS. All of the powers and duties of the Association existing under the Condominium Act, declaration of condominium and these Bylaws shall be exercised exclusively by the board of directors, its agents, contractors or employees, subject only to approval by apartment owners when such is specifically required.

5. OFFICERS.

A. The Executive Officers of the Association shall be a President who shall be a director, a Vice President, who shall be a director, a Secretary and a Treasurer, all of whom shall be elected annually by the board of directors and who may be peremptorily removed by vote of the directors at any meeting. Any person may hold two or more offices except that the President shall not be also the Secretary. The board of directors from time to time shall elect such other officers and designate their powers and duties as the board shall find to be required to manage the affairs of the Association.

B. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the members from time to time, as he in his discretion may determine appropriate, to assist in the conduct of the affairs of the Association.

C. The Vice President in the absence or disability of the President shall exercise the powers and perform all duties of the President. He also shall assist the President generally and exercise such other powers and perform such other duties as shall be prescribed by the directors.

D. The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors and other notices required by law. He shall have custody of the seal of the Association and affix it to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the President.

E. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.

F. The Compensation of all officers and employees of the Association shall be fixed by the directors. The provision that directors' fees shall be determined by members shall not preclude the board of directors from employing a director as an employee of the Association nor preclude the contracting with a director for the management of the condominium.

6. FISCAL MANAGEMENT. The provisions for fiscal management of the Association set forth in the declaration of condominium shall be supplemented by the following provisions:

A. Accounts. The receipts and expenditures of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common expenses.

(1) Current Expense, which shall include all receipts and expenditures within the year for which the budget is made including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves, or to additional improvements. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year.

(2) Reserve for Deferred Maintenance, which shall include funds for maintenance items that occur less frequently than annually.

(3) Reserve for Replacement, which shall include funds for repair or replacement required because of damage, depreciation or obsolescence.

(4) Betterments, which shall include the funds to be used for capital expenditures for additional improvements

or additional personal property that will be part of the common elements.

B. Budget. The board of directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray the common expense and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices.

(1) Copies of the Budget and proposed assessments shall be transmitted to each member on or before December 1 preceding the year for which the budget is made. If the budget is amended subsequently, a copy of the amended budget shall be furnished to each member.

C. Assessments. Assessments against the apartment owners for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 20 preceding the year for which the assessments are made. Such assessments shall be due in twelve (12) equal installments on the first day of each month of the year for which the assessments are made. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment and monthly installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessment may be amended at any time by the board of directors. The unpaid assessment for the remaining portion of the calendar year for which the amended assessment is made shall be due upon the date of the assessment. The first assessment shall be determined by the board of directors of the Association.

D. Acceleration of Assessment Installments upon Default. If an apartment owner shall be in default in the payment of an installment upon an assessment, the board of directors may accelerate the remaining installments of the assessment upon notice to the apartment owner, and then the unpaid balance of the assessment shall come due upon the date stated in the notice, but not less than ten (10) days after delivery of the notice to the apartment owner, or not less than twenty (20) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

E. Assessments for Emergencies. Assessments for common expenses of emergencies that cannot be paid from the annual assessments for common expenses shall be made only after notice of the need for such is given to the apartment owners concerned. After such notice and upon approval in writing by persons entitled to cast more than one-half of the votes of the apartment owners concerned, the assessment shall become effective, and it shall be due after thirty (30) days' notice in such manner as the board of directors of the Association may require in the notice of assessment.

F. The Depository of the Association shall be such bank or banks as shall be designated from time to time by the directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the directors.

G. An Audit of the accounts of the Association shall be made annually by a qualified accountant, and a copy of

the audit report shall be furnished to each member not later than April 1 of the year following the year for which the audit is made.

H. Fidelity Bonds may be required by the board of directors from all persons handling or responsible for Association funds. The amount of such bonds, if required, shall be determined by the directors, but shall be not less than one-half of the amount of the total annual assessments against members for common expenses. The premiums on such bonds shall be paid by the Association.

7. PARLIAMENTARY RULES. Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the declaration of condominium or these Bylaws.

8. AMENDMENTS. These Bylaws may be amended in the following manner:

A. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment shall be considered.

B. A Resolution adopting a proposed amendment may be proposed by either the board of directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

(1) Not less than 75% of the entire membership of the board of directors and by not less than 75% of the votes of the entire membership of the Association; or

(2) By not less than 80% of the votes of the entire membership of the Association; or

(3) Until the first election of directors, by all the directors.

C. Proviso. Provided, however, that no amendment shall discriminate against any apartment owner nor against any apartment or class or group of apartments unless the apartment owners so affected shall consent. No amendment shall be made that is in conflict with the declaration of condominium.

D. Execution and Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment of the Declaration and Bylaws, which certificate shall be executed by the officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and copy of the amendment are recorded in the public records of Lee County, Florida.

EXHIBIT "D"

CERTIFICATE OF SURVEYOR

Exhibit "D" to Declaration of Condominium for Breakers West, a Condominium, Certificate of Surveyor made this 26 day of September, 1974.

I, Robert S. O'Brien, of Lee County, Florida, certify as follows:

1. I am a surveyor authorized to practice in the State of Florida.
2. This certificate is made as to Breakers West, a condominium located on Sanibel Island, Florida, and in compliance with Chapter 711.08(1)(e) Florida Statutes.
3. The following exhibits to the Declaration of Condominium

<u>Exhibit No.</u>	<u>Title</u>
A	Description of the land
B	Survey and Plot Plan of the land and buildings
C	Bylaws of Breakers West Condominium Association
D	Certificate of Surveyor

together with the wording of the Declaration, constitute a correct representation of the improvements described, and there can be determined from them the identification, location, dimensions and size of the common elements and of each unit.

Robert S. O'Brien

Robert S. O'Brien
Professional Land Surveyor
Florida Certificate No. 2235

RECORDED IN OFFICIAL
RECORDS
LEE COUNTY, FLORIDA
RECORD VERIFIED

SEP 30 3 44 PM '74

SAL GERACI
CLERK OF CIRCUIT COURT
BY *[Signature]* DG

