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RECORD VERIFIED
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO., FLA

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AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
APPLICABLE TO
PORPOISE POINT SUBDIVISION

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KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, George A. Fry and Geraldine B. Fry, his wife, and Tracy L. Turner, Jr. and Rosemary F. Turner, his wife, as the owners of land included in Replat of Porpoise Point Subdivision, located in Indian River County, Florida, which said plat was filed in the office of the Clerk of the Circuit Court of Indian River County, Florida, on the 9th day of October, 1953, and said plat now appears on file and of record in Plat Book 3, Page 57, public records of Indian River County, Florida, did execute and record on December 1, 1953 in Deed Book 84, Page 383, public records of Indian River County, Florida, a "Declaration of Restrictions Applicable to Porpoise Point Subdivision"; and

WHEREAS, said Declaration of Restrictions Applicable to Porpoise Point Subdivision were amended by the following: (1) Amendment to Declaration of Restrictions Applicable to Porpoise Point Subdivision recorded on September 18, 1968 in Official Record Book 295, Page 256; (2) Amendment to Declaration of Restrictions Applicable to Porpoise Point Subdivision recorded on July 16, 1986 in Official Record Book 0741, Page 0216; and (3) Amendment to Declaration of Restrictions Applicable to Porpoise Point Subdivision recorded on May 13, 1987 in Official Record Book 0768, Page 0431; all recorded in the public records of Indian River County, Florida; and

WHEREAS, pursuant to paragraph No. 18 of the Declaration of Restrictions Applicable to Porpoise Point Subdivision, as recorded in Deed Book 84, Page 383, public records of Indian River County, Florida, and as subsequently amended of record, the owners of record of three-fourths (3/4) of all the area of said subdivision have the right to modify, amend or annul any of said Declaration of Restrictions; and

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RECORD AND RETURN TO
DARRELL FENNEL
979 BEACHLAND BLVD.
VERO BEACH, FLORIDA 32963

WHEREAS, the undersigned owners of lots in said subdivision desire to continue to provide for the preservation of the values and amenities in said subdivision and for the maintenance of common areas and common facilities; and to this end, desires to continue to subject the real property known as Porpoise Point Subdivision to the covenants, restrictions, reservations, charges and liens, hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, it is acknowledged by the undersigned owners of lots in said subdivision that an association was created and is validly existing known as "Porpoise Point Association, Inc." and that said Association was created for the efficient preservations of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the common areas and common facilities including enforcing the covenants and restrictions and collecting and disbursing the assessments, charges and fees of property owners, and

WHEREAS, the undersigned, being the owners of record of more than three-fourths (3/4) of all of the area of said Subdivision, desire to amend said Declaration of Restrictions Applicable to Porpoise Point and, for the sake of convenience, to restate said Declaration of Restrictions in their entirety.

NOW, THEREFORE, in consideration of the premises and covenants herein contained and other valuable considerations, the undersigned owners of record of more than three-fourths of all the area of said Porpoise Point Subdivision do agree that the provisions of this instrument completely supersede the provisions of said Declaration of Restrictions Applicable to Porpoise Point and all amendments thereto and hereby amend, modify, extend and restate said Declaration of Restrictions as follows:

AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
APPLICABLE TO
PORPOISE POINT SUBDIVISION

WHEREAS, for the benefit and protection of the present owners of property in Porpoise Point Subdivision, as said subdivision is recorded in Plat Book 3, Page 57, public records of Indian River County, Florida, sometimes hereinafter referred to as the "subdivision", and for the benefit and protection of those who in the future may own property in said subdivision, the present owners desire that the use of all property in said subdivision be restricted so as to promote development of said subdivision as an aesthetically pleasing residential neighborhood;

NOW THEREFORE, in consideration of the premises, and in order to accomplish the objectives hereinabove set forth, the owners of property in said subdivision do hereby declare that use of all property in said subdivision is now, and hereafter shall be, only in conformity with the restrictions hereinafter set forth, which restrictions are hereby approved and adopted, and which restrictions are now binding on owners and hereafter will be binding alike on owners, their heirs, devisees, successors and assigns, and on all persons, firms and corporations owning in the future any interest in any property in said subdivision, and each of said restrictions is hereby declared to be and to constitute a covenant running to and for the benefit of every purchaser of any property in said subdivision, and said restrictions as such covenants shall run with the land and shall inure to, extend to and be binding upon the owners of any property in said subdivision and said restrictions are:

SECTION 1 - DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to Porpoise Point Association, Inc.

(b) "The Properties" shall mean and refer to all properties subject to this Declaration included within Porpoise Point Subdivision according to the replat of Porpoise Point Subdivision filed in the office of the Clerk of the Circuit Court of Indian River County, Florida, in Plat Book 3, Page 57.

(c) "Common Areas" shall mean and refer to the portion of The Properties constituting the "park, beach and recreational parcel" (as reflected in Section No. 3 hereof) and the two front entrance areas located at the intersections of (1) Highway A1A and North Porpoise Point Lane and (2) Highway A1A and South Porpoise Point Lane; and the improvements thereon consisting of, but not limited to, subdivision identity signs, lighting, lawn, ornamental hedges, shrubs, plants, trees and flowers, irrigation systems, decorative walls, fences and similar improvements for the benefit of the subdivision property; and "common facilities" shall mean and refer to the lawns, grassy areas, hedges, shrubs, ornamental plantings, irrigation systems, street lights, subdivision identity signs, decorative walls, fences and similar improvements for the benefit of the subdivision property (1) located within the "common areas" and/or (2) located within or adjacent to the subdivision properties which are subject to these restrictive covenants but not within any of the lots as defined in subparagraph (d) immediately following.

(d) "Lot" shall mean and refer to each of the 29 numbered

lots as reflected upon the recorded subdivision plat of The Properties.

(e) "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to a lot in the subdivision, but not withstanding any applicable provision of any mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or in lieu of foreclosure.

(f) "Member" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee interest in any lot in the subdivision, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

(g) "Declaration" shall mean and refer to this Amended and Restated Declaration of Restrictions Applicable to Porpoise Point Subdivision and recorded in the office of the Clerk of the Circuit Court of Indian River County, Florida.

(h) "Architectural Review Committee" shall be a committee of three individuals appointed by the Board of Directors of the Association for the purpose of maintaining the quality and architectural harmony of the subdivision. Any vacancy occurring on the committee because of death or other termination shall be filled by the Board of Directors of the Association. The action of the majority of the Committee shall constitute the action of the Committee.

SECTION 2 - RESTRICTIONS

1. Lands in said subdivision shall not be used for any purpose except erection, maintenance and use as single family private residences. There shall be no commercial or professional use of the lands in said subdivision, no matter how incidental such use may be to the single family dwelling purpose.

2. No building or structure of any kind or character whatsoever shall be erected, reconstructed or maintained on any lot except a separate and detached single family private dwelling house, and each dwelling house shall be designed and erected for the occupation by a single private family only. For use with such residence, in-ground swimming pools and likekind in-ground facilities such as jacuzzis and adjacent decks or patios and enclosures shall be permitted. It is also specifically provided that:

A. As to Lots 8, 9, 22 and 23, no building or structure for any purpose shall be erected, placed or permitted to remain in said subdivision which shall be more than two stories in height with a maximum height of 35 feet exclusive of chimneys. ✓

B. As to all lots other than Lots 8, 9, 22 and 23, no building or structure for any purpose shall be erected, placed or permitted to remain in said subdivision which shall be more than one story in height with a maximum height of 25 feet exclusive of chimneys. ✓

C. Height, for the purpose of computing the height limitations set forth in sub-paragraphs A and B immediately above, is defined as follows: the vertical distance to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for sloped roofs, measured from the average natural grade or the minimum flood elevation, whichever is higher.

D. No sheds or auxiliary buildings or structures shall be permitted.

E. No residence shall be erected, placed or permitted to remain in said subdivision which covers less than 2,000 square feet of living area, exclusive of open or screened porches and attached garages.

F. Each dwelling shall include an attached enclosed garage. Open carports are prohibited.

3. No building or structure of any kind for any permitted use shall be erected or reconstructed less than 35 feet from any street or roadway boundary line nor less than 20 feet from any side or back lot line, except as to Lots 1 through 8 the restriction shall be not less than 30 feet from any street or roadway boundary line nor less than 20 feet from any side or back lot line. No building or structure of any kind shall be erected or reconstructed less than 25 feet from the east boundary line of Lots 12 and 19 nor less than 25 feet from the west boundary line of Lots 11 and 20. The west boundary line of Lots 1, 15, 16 and 29 shall be considered a "side line". Specifically excepted from the set back limitations of this paragraph 3 are driveways and walkways and oceanfront decks. Further, specifically excepted from the side and rear set back limitations hereinbefore provided in this paragraph 3 are in-ground swimming pools and likekind in-ground facilities such as jacuzzis and adjacent decks or patios and enclosures therefor, and as to these excepted "structures" or improvements the side lot line set back limitation shall be 15 feet and the rear lot line set back limitation shall be 10 feet.

4. Only one dwelling house as permitted in Paragraph 2, shall be erected, placed or suffered to remain on any one lot in said subdivision.

5. 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.

6. Fences on street or roadway boundaries of lots shall be ornamental, not to exceed 36 inches in height. Fences on side and/or rear building lines shall be ornamental and not more than 5 feet high. No chain link, woven wire or barbed wire fences shall be permitted. Height restrictions shall not apply to vegetation that may be used in lieu of constructed fences.

7. All portions of lots referred to in these restrictions lying in front of the building line, as hereinbefore set forth, shall be used for ornamental purposes.

8. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, domestic cats and other household pets may be kept provided they are not kept, bred or maintained for commercial purposes. Any dogs permitted outdoors and off the property of the lot owner shall be on a leash at all times when outdoors and off the property of the lot owner.

9. No radio or television towers or like facilities of any kind shall be permitted. However, satellite disks may be permitted subject to the prior review and approval of same by the Architectural Review Committee as to location, size, required landscaping and like consideration for the protection and benefit of the subdivision and the quality and aesthetics thereof.

10. No above ground swimming pools shall be permitted.

11. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any part of the property and no refuse pile, rubbish, trash or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

12. All water pumps, sprinkling systems, gas tanks, garbage cans and air conditioning units shall be screened with a structure to harmonize with existing structures or screened with adequate landscaping material so as not to be obviously visible from the street or adjoining side or rear lot.

13. No sign of any kind shall be displayed to the public view on any lot except a sign showing the name of the owner and/or house number and occupying not more than one square foot of space.

14. No structure shall be erected on any lot by any person without the written approval of the Architectural Review Committee. For purposes of this section, the word "structure" shall be broadly construed and shall include but not be limited to dwellings, buildings, swimming pools, solar heating systems, fences, walls, porches, towers, driveways, walks and any other thing erected or placed upon any part of the property. For purposes of this section, an addition to a present structure or a modification to an existing structure (other than modifications of the interior partitions or similar remodeling not exposed to public view) shall be considered a structure and shall require architectural approval. Reasonable landscaping, at least and minimally in accordance with the general landscaping practice of the other developed lots in the subdivision, shall be required. Underground sprinkling systems reasonably covering the grass and plantings is a requirement. The following information must be submitted to the Architectural Review Committee:

(a) Complete building plans and specifications, including elevations and cross-sections, showing the shape, height and type material thereof.

(b) A plot plan indicating the location of the structure and of compliance with applicable building codes and these restrictive covenants.

(c) Such other plans, drawings, items or information as the Architectural Review Committee may reasonably require in order for it to carry out its duties and functions hereunder.

The Architectural Review Committee shall have 30 days after receipt of all of the above documents to approve or disapprove construction. Any disapproval shall be accompanied by a list of deficiencies which an owner may correct and resubmit for approval.

15. All owners of lots in said subdivision shall maintain the lawns and grounds thereof in a manner in keeping with good husbandry and the general character of the other lots in the subdivision. In the event the owner of any lot fails to comply with the provisions of this paragraph, the Association, through its Board of Directors, may, after twenty (20) days written notice to the lot owner, proceed for the remedying of the conditions of such lot and the costs of doing so shall be charged and to and paid by such lot owner.

16. No truck, bus, camper, motor home, recreational vehicle, travel trailer ("pop-up" or otherwise), boat, boat trailer, or other trailer, shall be parked, stored, or allowed to remain on any part of any lot or on the streets in the subdivision except in a covered, totally enclosed garage or

when substantially screened from view by plantings, hedges, shrubs or similar natural vegetation on the permitted residence. No vacant lot within the subdivision may be used for storage or parking of any motor vehicle except for temporary daytime use.

17. No dismantled automobile or trucks shall be permitted to remain parked outside on any lot or street. This provision shall include any motor vehicle without a current license tag. Failure to comply with this paragraph shall be considered a nuisance which may be abated by the removal of the vehicle at the cost of the owner.

SECTION 3 - PARK, BEACH AND RECREATIONAL PARCEL

It is acknowledged and confirmed that Porpoise Point Association, Inc. presently owns the following park, beach and recreational parcel, to wit:

From a point of beginning on the right-of-way line of Sandpiper Lane as shown on the replat of Porpoise Point Subdivision in Government Lot 4, Section 21, and Government Lot 1, Section 22, Township 33 South, Range 40 East, Indian River County, Florida, as recorded in Plat Book 3, Page 57, public records of said county, said point of beginning being at the intersection of the line lying 26.65 feet east of the west boundary line of Lot 8 of said subdivision, and a line being 30 feet north of the south boundary line of said Lot 8.

From said point of beginning run east on a line lying parallel to and 30 feet north of the south boundary line of said Lot 8 for a distance of 219.46 feet, thence run north on a line parallel to the west boundary line of said Lot 8 for a distance of 55 feet to a concrete monument, thence run east on a line parallel to the south boundary line of said Lot 8 to the Atlantic Ocean, thence run southeasterly along the Atlantic Ocean to the intersection of the south boundary line of said Lot 8 with the Atlantic Ocean, thence run west on the south boundary line of said Lot 8 to the intersection of the right-of-way line of the said Sandpiper Lane, thence traverse a curve for a radius of 40 feet and being concave as appearing on said subdivision plat in a northwesterly direction to said point of beginning. All of the above described parcel of land lying and being in said Lot 8.

LESS AND EXCEPTING the north 47 feet of the south 85 feet of Lot 8, Replat of Porpoise Point as recorded in Plat Book 3, Page 57, Indian River County, Florida, less the westerly 246.11 feet thereof. Previously conveyed to Walter H. Enz and Adah W. Enz, his wife, as recorded in Official Record Book 0638, Page 0731, public records of Indian River County, Florida.

It is hereby reaffirmed and declared that title, ownership and control of the tract of land set forth in this paragraph shall remain in and be held by said Association for the sole and exclusive use and benefit of the lot owners and residents of the subdivision, and their friends and guests as and for park, beach and recreational purposes.

SECTION 4 - COVENANTS FOR MAINTENANCE ASSESSMENTS

1. Each owner of a lot by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association the following (a) annual general assessments or charges, and (b) special assessments for capital improvements or major repairs.

2. All such assessments, together with interest thereon and costs of collection as provided by the Board of Directors of the Association, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest and costs of collection, shall also be the personal obligation of the owner of such lot at the time when the assessment fell due.

3. The general assessment levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of The Properties and for the improvement, maintenance, repair, upkeep, replacement and operation of the Common Areas and Common Facilities.

4. Each lot shall be assessed equally in an amount or amounts as determined by the Association.

5. The method and manner of assessment shall be as set forth in the Association's bylaws.

6. If the assessments are not paid on the date when due then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. (The personal obligation of the then owner to pay such assessment shall pass to the owner's successors in title.) If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 10% per annum until paid in full. The Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action including attorney's fees and costs on appeal.

7. The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed on The Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have been due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

SECTION 5 - "GRANDFATHERING"
OF EXISTING IMPROVEMENTS AND STRUCTURES

At the time of recording of this instrument, the following lots in the subdivision, to wit: Lots 3, 6, 14, 25 and 26, are vacant lots and no residences, dwellings, auxiliary buildings or structures have been constructed thereon. The

remainder of the lots in said subdivision have been improved with single family residences with auxiliary outbuildings and other structures or improvements incidental or appurtenant thereto. In the event that any of the residences, auxiliary buildings, or other structures or improvements on the already improved lots are in violation of any of the restrictions as set forth in "Section 2 - Restrictions", other than those related to use, then any and all such existing non-conformities shall not be considered in violation of these restrictive covenants subject to the following:

A. Generally. No non-conformity shall be enlarged, increased, or changed to a different non-conformity, except upon a determination by the Architectural Review Committee that the change results in lessening of the degree of non-conformity.

B. Additions to Non-conforming Structures. Additions to non-conforming structures containing conforming uses shall be permitted, if the additions to the structure(s) comply fully with setback and other applicable site-related restrictions and if approved by the Architectural Review Committee.

C. Repair or Alteration of Non-conformities. Repairs, maintenance and improvements of non-conformities may be carried out, provided that such work does not increase the cubic content of the building or the floor or ground area devoted to the non-conforming use and does not in any way increase or create a site-related non-conformity. Moreover, such work shall not conflict with the reconstruction provisions of subparagraph D hereafter set forth.

D. Reconstruction of Non-conformities. If any non-conforming structure is damaged by causes including but not limited to fire, flood, explosion, collapse, wind, neglect, age, or is voluntarily razed or disassembled to such an extent that the cost of repair or reconstruction will exceed fifty (50) percent of the building's value as shown on the tax assessment roll at the time of damage or proposed reconstruction, the non-conformity shall be deemed terminated, and shall not thereafter be re-established.

SECTION 6 - AMENDMENTS, VALIDITY & ENFORCEMENT

1. At any time hereafter it shall be sufficient in order to modify, extend, amend or annul any of the restrictive covenants or other provisions herein contained upon the approval of the then owners of record of at least 75% of the lots (75% being 22 lots) in said subdivision. Such modification, extension, amendment or annulment shall be by an instrument in writing executed in the manner required by the laws of Florida for the execution of warranty deeds duly recorded in the public records of Indian River County, Florida.

2. Invalidation of any restriction or covenant herein contained by judgment, decree or order of any court shall not affect the validity of any of the other restrictions or covenants which shall remain in full force and effect.

3. These restrictions and limitations may be enforced by the Association or by one or more lot owners by a proceeding in law or in equity against any person or persons violating or attempting to violate the same and the plaintiffs in any such action may restrain violation of the same or recover any damage, or both.

SECTION 7 - BINDING EFFECT

These Amended and Restated Declaration of Restrictions Applicable to Porpoise Point Subdivision herein set forth shall be regarded as covenants and not conditions, and shall run with the land and be in full force and effect against, and binding on all owners of any interest in any land in said subdivision until and including November 1, 2002, and thereafter for successive periods of ten years each unless prior to November 1, 2002, or prior to the expiration of any such ten-year period of extended duration, this Declaration is terminated by an instrument, in writing, executed in the manner required by the laws of the State of Florida for the execution of warranty deeds duly recorded in the public records of Indian River County, Florida, and signed by the then owners of record of at least 75% of the lots (75% being 22 lots) in said subdivision.

This document may be executed in counter-parts, each of which may be considered an original and may be executed on separate signature pages hereto attached.

IN WITNESS WHEREOF, the undersigned, being the owners of at least three-fourths (3/4) of all the area of Porpoise Point Subdivision, have hereunto set their hands and seals on the dates hereafter stated.

