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DECLARATION OF COVENANTS AND RESTRICTIONS  
KEY COLONY SUBDIVISION  
VOLUSIA COUNTY, FLORIDA  
AND  
NOTICE OF PROVISIONS OF  
KEY COLONY BEACHSIDE HOMEOWNERS' ASSOCIATION, INC.

THIS DECLARATION, made this 18th day of January, 1996, by ANDERSON-CLOAR, INC. a Florida Corporation, with its principal place of business at 770 West Granada Boulevard, Ormond Beach, Volusia County, Florida, (hereinafter sometimes referred to as the "Developer").

- WITNESSETH -

WHEREAS, the Developer is the record owner in fee simple absolute of certain real property located in Volusia County, Florida, and more particularly described in the "Schedule of Legal Description: which is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, in accordance with the applicable provisions of State law and local ordinance, the Developer caused the above described real property to be subdivided into lots known as KEY COLONY Subdivision, (hereinafter "the subdivision") and subdivision plats thereof duly filed in the Office of the Clerk of the Circuit Court, Volusia County, Florida, on January 18, 1996 and recorded in Map Book 45, Page 99 of the Public Records of Volusia County, Florida; and

WHEREAS, it is the intention of the Developer to develop the subdivision as high quality low density subdivision with common areas, private streets, alleys and recreation areas as shown on the above referenced plat.

WHEREAS, there is a need to specify, make and impose covenants, and to grant necessary easements for the use of the subdivision, and to provide for an effective administration of the streets, alleys and common areas in the subdivision; and

WHEREAS, the Developer has caused to be incorporated in Florida a non-profit corporation known as KEY COLONY BEACHSIDE Homeowners' Association, Inc. which has been formed to manage the street and common areas, collect assessments, and generally provide for the orderly enjoyment of the subdivision.

NOW, THEREFORE, this Declaration is made, filed and recorded by the Developer so that from the effective date thereof, the real property described in the Schedule of Legal Description which is attached hereto as Exhibit "A", is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the restriction, conditions, easements, charges, burdens, assessments, affirmative obligations, and liens (all hereinafter sometimes referred to as the "covenants") hereinafter set forth. This Declaration shall become effective on the date and at the time it is filed and recorded in the Public Records of Volusia County, Florida.

ARTICLE I  
DEFINITIONS AND DESCRIPTION OF PROPERTY

Section 1.1 Definitions. The following words and terms when used in this Declaration and any supplemental declaration, unless the context shall clearly indicate otherwise, shall have the following meanings:

a) "Association" shall mean and refer to KEY COLONY BEACHSIDE Homeowners' Association, Inc., a Florida Corporation not for profit, and its successors and assigns, the memberships of which will be owners of "dwelling units" or "lots" in the subdivision, filed by Developer.

b) "Developer" shall mean and refer to Anderson-Clear, Inc., a Florida Corporation, its successors and assigns.

c) "Lot" shall mean any parcel of land located within the subdivision, which is intended for use as a site for a single family dwelling. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are substantially complete or are subject to ad valorem tax improved property.

d) "Dwelling Unit" shall mean one building constructed primarily for use as zoned for residential dwelling.

e) "Architectural Control Committee" (ACC) shall mean a committee appointed by the Developer in accordance with Section 3.1.

Section 1.2 Property subject to Covenants and Restrictions. The property subject to the Declaration of Covenants and Restrictions is that property described in the Schedule of Legal Description which is attached hereto as Exhibit "A".

## ARTICLE II RESTRICTIVE COVENANTS

Section 2.1 No lot shall be used for any purpose other than a one family dwelling with not less than 1,000 square feet of living area and an attached two (2) car garage. The areas included within the lot line of each individual lot, but not included within the dwelling constructed on such lot, such areas being hereinafter referred to as "grounds", shall be used for normal and customary yard purposes.

Section 2.2 No building structure, including an addition to a dwelling, shall be erected on, placed on, altered, or permitted on any lot without the written approval of the Architectural Control Committee, as hereinafter provided. The Architectural Control Committee shall review the proposed building or structure (including plans and specifications for same) as to the harmony of the external design and location of the building or structure compared to existing buildings and structures, the location of the building or structure with respect to topography, vegetation, and the finished grade of elevation of the lot, and any other relevant considerations which are based upon acceptable standards of planning, zoning, and construction, including considerations which are exclusively on aesthetic factors. The term "structure" as used herein shall include, but is not limited to swimming pools, fences, walls, barbecue pits, television or radio antennae, clotheslines, garages, sheds, outbuildings, porches, balconies, patios, driveways, walks, lighting apparatus, window barriers, window awnings, recreational facilities such as basketball courts or goals, tennis courts, shuffleboard courts, and lawn decorative objects

such as statues, tables, etc., basements, tents, shacks, barns, sheds, or other temporary storage or residence facilities. All garages built shall be and remain garages and shall not be converted to any other use unless a replacement garage is built and the plans are approved by the ACC. The driveway to said garage is to be for the exclusive use of said garage owner.

Section 2.3 No recreational vehicle, boat, boat and trailer, or trailer alone shall be parked (for any period of time in excess of ten consecutive hours) or stored or otherwise permitted to remain on any lot, street, or private access drive except in an approved garage, attached to the residence. No automobile, truck, or other commercial vehicle which contains lettering shall be parked (for any period of time in excess of ten consecutive hours) or stored or otherwise permitted to remain on any lot, street, or private access drive except in a garage attached to the residence.

Section 2.4 In order to maintain uniformity of appearance, no owner of any dwelling shall change exterior materials or colors, either of the exterior walls or roof of said dwelling without specific written approval of the association. The Association shall have the right from time to time to adopt and enforce rules and regulations for the maintenance and appearance of the exteriors of dwellings and other structures. All lot owners will use the mailboxes specified by the Developer. No other mailboxes shall be permitted.

Section 2.5 The Association shall be responsible for keeping all of the grounds mowed and maintained. Each lot owner grants to the Association a non exclusive and non revocable easement to enter upon all lots and common areas for the purpose of maintaining the property as described herein. The Association shall have the right to adopt rules and regulations to enforce this provision.

Section 2.6 Each owner of a lot agrees to maintain fire and extended coverage casualty insurance on the improvements on such lot, and agrees to use the proceeds thereof to repair or replace any damage to or destruction of improvements within reasonable time after such casualty.

Section 2.7 In order to maintain and preserve the peace and tranquility of the neighborhood, the association shall have the right to adopt reasonable rules and regulations regarding the keeping of dogs, cats, or other

domesticated household pets and specifically shall have the right (i) to require such animals to be leashed; (ii) to prohibit such animals from roaming at large beyond the confines of their owners' property; (iii) to require that owners keep their pets from making such noises as disturb others; and (iv) to adopt such rules and regulations as may seem necessary or required to carry out the purposes of this restriction.

Section 2.8 The Architectural Control Committee shall be composed of three (3) persons. The members of the Committee shall be appointed by the Developer. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the Architectural Control Committee, the remaining members shall promptly appoint a successor member. The Developer shall be the Architectural Control Committee until such time as the Developer in its sole discretion decides to turn over the Architectural Control Committee to the Homeowners' Association.

Section 2.9 The Architectural Control Committee shall indicate its approval or disapproval, as it may decide, of the matters required in Section 2.2 hereof to be approved or acted upon by them, by a written instrument filed with the Secretary of the Board of Directors of the Association, and served personally or by certified mail upon the applicant, identifying the proposed building or structure and, if the same is disapproved, the reasons for such disapproval. The decision of the Architectural Control committee shall be final. If the Architectural Control Committee fails or refuses to approve or disapprove the aforesaid matters within thirty (30) days after a completed application or request for action is made and after a floor plan, elevation and abbreviated specifications (including landscaping, exterior materials, colors, and site plan) and damage deposit have been received by the committee, then it shall be conclusively presumed as to all owners and interested persons, that the alleged violation of this declaration is, and it shall be deemed automatically to be excused, and any and all rights of action arising therefrom shall be deemed to have been waived, and the applicable restrictive covenants shall be deemed to have been complied with.

Section 2.10 No sign of any kind shall be created, permitted to remain on or displayed to public view on or from any lot, except an approved sign giving the name of the occupant of the residence located on said lot or an approved sign advertising the premises for sale or rent. All signs shall be

approved by the Architectural Control Committee. One political sign per candidate or issue is permitted to be erected one week prior to the election. All political signs must be removed the day following the election. All signs must comply with applicable governmental regulations.

Section 2.11 No noxious or offensive activity that may, or may become an annoyance, or a private or public nuisance, shall be carried on or suffered to exist on any lot.

Section 2.12 No lot or common area shall be used for dumping or discharging of rubbish, trash, garbage, or other solid waste material. All lots shall be kept free of the accumulation of rubbish, trash, garbage, other solid waste materials and all unsightly weeds and underbrush. All incinerators or other equipment used for the collection, storage or disposal of solid waste materials shall be kept in a clean and sanitary condition. The use of any incinerators or similar equipment or facilities shall be in accordance with applicable state, county and city environmental laws or ordinances.

Section 2.13 Restrictions regarding the fence, wall, hedge or shrub planting or corner lots at intersections shall be as prescribed by the Architectural Control Committee.

Section 2.14 No driveway shall be constructed, maintained, altered, or permitted to exist on any lot if the driveway obstructs or would obstruct or significantly impede the flow of surface drainage in the area adjacent to the lot or in the street right-of-way or swale area adjoining or abutting the lot.

Section 2.15 (a) No garages or screen porches shall be converted to other than their original purpose without the approval of the Architectural Control Committee.

(b) No recreational vehicles or boats shall be stored on any lot except in garages (which may or may not be attached to the residence) and/or boat houses. All garage entrances shall be on the side or rear of the homes.

(c) No change in the Deed Restrictions and

Covenants which would alter the design or use of the property and structures shall be made without the written permission of the City of Daytona Beach Shores.

Section 2.16 All lot owners requesting any construction changes or additions of any kind shall provide a \$1000.00 damage deposit with the Homeowners' Association at the time their plans are submitted to the Architectural Control Committee. The deposit shall be returned to the owner once the construction is complete and the area has been cleaned and any damage to the sidewalks, street and curbs, etc., has been repaired.

### ARTICLE III ASSOCIATION

Section 3.1 To effectively and efficiently provide for the administration of the common areas by the owners of lot or dwelling units in the Subdivision (all units), a non-profit corporation known and designated as "KEY COLONY BEACHSIDE Homeowners' Association, Inc.", a non-profit Florida Corporation has been created. The Association shall operate, maintain and manage the common areas, shall operate, maintain and manage the streets, (including all sidewalks and islands within the streets), shall maintain and manage all pedestrian walks constructed within common area/pedestrian easements, shall maintain and manage any pool, etc. in the common areas, shall maintain and manage landscaping in all common areas and all individual lots in Key Colony Subdivision and shall assist in the enforcement of the restrictions and covenants contained herein, and shall undertake and perform all acts and duties necessary and incident to such duties, all in accordance with the provisions of this Declaration and the Certificate of Incorporation and By-Laws of said Association. A true and complete copy of the Certificate of Incorporation of the Association is annexed hereto as Exhibit "B" and is expressly made a part hereof.

Section 3.2 The owner of each lot within the Subdivision, (all units), shall automatically become a member of the Association upon his or her acquisition of an ownership interest in title to any lot or dwelling unit. The membership of such owner shall terminate automatically at the time that such owner divests

himself or it divested of such ownership interest, or title to such lot or dwelling unit, regardless of the means by which such ownership may have been divested.

Section 3.3 No person or corporation or other business entity holding any liens, mortgage or other encumbrance upon any lot or dwelling unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association or to any of the right and privileges, or be charged with any of the duties of such membership; provided, however, that nothing contained herein shall be construed as prohibiting membership in the Association of a person, corporation, or other business entity which acquires title to a lot or dwelling unit either by foreclosure or by voluntary conveyance from its mortgagor or said mortgagor's successors or assigns.

Section 3.4 In the administration, operation and management of the common areas and the enforcement of these covenants and restrictions, the Association shall have and is hereby granted full power and authority to enforce all the provisions of this Declaration, to levy and collect assessments in accordance herewith, and to adopt, promulgate, and enforce such rules and regulations governing the use and enjoyment of the common areas and the administration of the aforesaid covenants and restrictions as the Board of Directors of the Association may from time to time deem appropriate and in the best interests of the Association.

Section 3.5 The Association will initially be operated by the Developer. The Developer has formed the corporation and a copy of the Articles of Incorporation of KEY COLONY BEACHSIDE Homeowners' Association, Inc. and a Certificate from the Florida Secretary of State is attached hereto and marked Exhibit "B". Until such time as the Developer has sold and closed seventy (70%) percent of the lots in the subdivision, or sooner, at the discretion of the Developer, the Developer shall remain in control of the Homeowners' Association. When seventy (70%) percent of the lots in the subdivision have been conveyed to third party purchasers and deeds so reflecting have been recorded in the Public Records of Volusia County, Florida, the Developer will schedule a meeting of the lot owners for purposes of electing a Board of Directors for the Association. Until such time, the Developer will appoint a Board of Directors, who will in turn elect officers of the Association until seventy (70%) percent of the lots are sold. After lot owners are entitled to elect the Board of Directors, the



Directors and Officers will be selected in accordance with the By-Laws of the Corporation. The Developer shall always be entitled to vote the total number of lots owned by the Developer at any regular or special meeting of the lot owners. Further, nothing shall prohibit the Developer from continuing to serve on the Board of Directors after seventy (70%) percent of the lots are sold to third party purchasers provided he is duly elected by the membership pursuant to the By-Laws. The method of transferring control of the Homeowners' Association from the Developer to the lot owners may sometimes herein be referred to as "turnover of association control".

Section 3.6. The Association shall be responsible for the maintenance, operation, and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system shall mean the exercise of practices which allow the system to provide drainage, water storage or conveyance or other surface water stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District.

Section 3.7. The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Lot which is part of the surface water or stormwater management system at a reasonable time and in a reasonable manner to operate, maintain, or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, without the prior written approval of the St. Johns River Water Management District.

ARTICLE IV  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of Lien and Personal Obligation. The Developer covenants, and each owner or tenant of each and every lot or dwelling unit shall by acceptance of a deed or other instrument of conveyance therefore, whether or not it shall be so expressed in any such deed or instrument, be deemed to covenant and agree to all the terms, covenants, conditions, restrictions, and other provisions of this Declaration and to promptly pay to the Association or its successors or assigns the following:

(a) All monthly assessments or charges, and

(b) All special assessments or charges for the purpose set forth in Section 4.2 of this article, such assessments or charges shall be fixed, established, levied, and collected from time to time as hereinafter provided. The monthly and special assessments (together with such interest thereon and the cost of collection including reasonable attorneys' fees, both at trial and on appeal, as hereinafter provided) shall be a charge and continuing lien on the real property and improvements thereon against which such assessment is made, whether or not claim of lien is filed. Each such assessment (together with such interest thereon and the cost of collection including reasonable attorneys' fees as above established) shall also be the personal obligation of the person who was the owner of such real property at the time when the assessment first became due and payable, and also the joint and several personal obligation of any subsequent grantees who take title without first obtaining a letter from the Association as herein provided, that there are no outstanding assessments against the lot being purchased. In the case of co-ownership or co-tenancy of a lot or dwelling unit each owner or tenant shall be jointly and severally liable for the entire amount of the assessment and the aforesaid interest, collection costs, and attorneys' fees. Prospective purchasers are hereby notified of the possible charge against the property in the Subdivision, and are directed to Section 4.5 hereinbelow.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement, and operation of the Common Areas and Properties and to provide services which the Association is authorized to

provide including, but not limited to the payment of taxes, governmental assessments, insurance premiums, construction of improvements, repair, replacement, maintenance and mowing of all lots and Common Areas, and to acquire additions to the Common Areas and Properties, payment of the cost to acquire labor, services including professional services of attorneys and accountant, etc., equipment, materials, management, and the supervision, necessary to carry out the authorized functions of the Association, and for the payment of principal, interest and other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized functions, including the payment of mortgages covering the Common Area and Property at the time of conveyance to the Association. No initiation fee may be charged to members of the Association as a pre-condition to use of such facilities. The Association shall not be bound in setting assessments set in earlier years. Notwithstanding any of the provisions of this Article, in no event shall the assessments and other revenues collected by the Association exceed its expenses and reasonable reserves to an extent which would violate the Association's non-profit status.

Section 4.3 The initial Monthly assessment is hereby set at \$95.00 per lot or dwelling unit. Thereafter, regular monthly assessments shall be determined at any regular meeting of the directors of the Association. The regular monthly assessment may be increased beyond that set by the Board of Directors upon approval of two-thirds of the membership in attendance at any regular or special meeting of the Association, but only after notice of the recommendation is given to all members at least ten (10) days prior to the date of said meeting; provided, however, that nothing herein shall be construed to preclude the Board of Directors of the Association from fixing and levying an emergency assessment not to exceed one half of the regular assessment, which emergency assessment may be levied without notice to the membership and without the holding of any special or regular meeting of said membership of the Association.

Anything in the preceding paragraph to the contrary notwithstanding, a Purchaser from the Developer of a unit or lot shall be obligated to pay the entire monthly assessment at the date of the closing of the lot purchased regardless of closing date. Thereafter the monthly assessments shall be due and payable on first day of each month. The Developer shall not be obligated to pay any assessments (of any kind, nature or description, general or special) on any

unimproved (vacant) lots or lands or any improved lots or lands which it may own now and said exemption shall continue even after the Developer turns over the control the Development to the Association.

Section 4.4 Assessments which are not paid on or before the date the same shall become due shall be delinquent, and each delinquent assessment shall bear interest at eighteen percent (18%) per annum until it is paid in full. In addition to the accrual of interest, when an assessment becomes delinquent in payment, the Association may file a claim of lien to perfect the lien for such assessment as against third persons, against the dwelling unit and other property of the owner(s) who defaulted in the payment of such assessment. There shall be no exemption from the payment of any assessment or installment thereof by waiver of the use of the common area by abandonment of the lot or dwelling unit, by extended absence from the subdivision, or by or for any other reason, except as provided in paragraph 4.3.

Section 4.5 The Association, upon written request of any owner, shall furnish to a prospective purchaser or prospective mortgagee or other authorized person a statement of the current status of the assessments on such owner's lot or dwelling unit. When executed by the Treasurer of the Association, the statement shall be binding on the Association, and any purchaser or mortgagee may rely upon such statement as an accurate statement of the status of assessments.

Section 4.6 All revenue collected by the Association shall be segregated, held and used as the separate property of the Association, and such revenue may be applied by the Association, at the discretion of the Board of Directors, towards the payment of any expenses of operation and any other lawful expenses of the Association. Revenue collected by the Association from an owner of a lot or dwelling unit may be co-mingled with monies collected from other owners.

Section 4.7 Although all funds and other assets of the Association, and any profits derived therefrom, shall be held for the benefit of the members of the Association, no member of said Association shall have the right to assign, encumber, hypothecate, pledge, or in any manner transfer his membership or interest in or to said funds and assets, except as an appurtenance to his lot or

dwelling unit. When an owner of a lot or dwelling unit shall cease to be a member of the Association by reason of the divestment by him of his ownership

of said lot or dwelling unit, by whatever means that occurs, the Association shall not be required to account to said owner for any share of the funds or assets of the Association.

Section 4.8 In the event that any mortgagor (hereinafter "mortgage holder") shall acquire title to any lot or dwelling unit by virtue of any foreclosure or judicial sale, or in the event any such mortgage holder shall acquire title by deed in lieu of foreclosure from the mortgagor or his personal representative, successors or assigns, then such mortgage holder who acquired title shall not be liable or obligated for the payment of any assessment or assessments which are in default or are delinquent at the time said mortgage holder acquired such title. A mortgage holder acquiring title by foreclosure, judicial sale or deed in lieu of foreclosure shall be liable only for assessments due and owing after title vests in said mortgage holder, prorated to the date that title is transferred. In the event title is acquired by a mortgage holder as aforesaid, any assessment or assessments as to which said mortgage holder is not fully liable, shall be absorbed and paid by all the owners of all of the lots and dwelling units as an expense to the Association; provided, however, that said mortgage holder so acquiring title shall not be obligated to pay any general or special assessment for said arrearage; and provided further, that nothing contained herein nor any action taken by said owners shall be construed to constitute a release or waiver of liability against the owner who was liable for such delinquent assessments or the enforcement of collection of such payment by means other than foreclosure. In the event that any person, firm, corporation, other business entity, or mortgage holder shall acquire title to any lot or dwelling unit and its appurtenant interest in the Association by virtue of any foreclosure or judicial sale, the party so acquiring title shall be liable and obligated for such assessments as may accrue and become due and payable with respect to said dwelling unit and the common areas subsequent to the date of acquisition of such title.

Section 4.9 Recognizing that proper management and operation of the common area and property (including improvements thereto) result in benefit to all members of the Association, the Association shall have the right to impose

a lien for delinquent assessments on a lot within the subdivision (whether or not said lot is vacant, excepting Developer lots as defined in paragraph 4.3 which lien shall include the present and future interests of each member of the Association in the common area and property and improvements thereto, to secure the prompt payment of each and all assessments made and levied in accordance with this Declaration. Each owner shall be liable for, and this lien shall secure, the full amount of said assessment, and the costs and expenses, including attorneys' fees at trial and on appeal which may be incurred by the Association in enforcing this lien or the provisions of this Declaration. Reasonable attorneys fees incurred by the Association incident to the collection of such assessments or the enforcement of such lien, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association, in order to preserve and protect its lien, shall be payable by the Lot Owner and secured by such lien. The Board of Directors may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in its best interest. Said lien shall be effective upon recording and shall have the priorities established by law. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply as a cash credit against its bid, all sums due, as provided herein, covered by the lien enforced. In case of such foreclosure, the Lot Owner may be required to pay a reasonable rental for the Parcel for the period of time said Lot Owner is in possession in the Court's discretion, and Plaintiff in such foreclosure shall be entitled to the appointment of a Receiver to collect same for the Lot Owner and/or Occupant if awarded.

Section 4.10 The lien herein established may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. The lien granted herein shall also secure such payment of or advances for taxes and payments on superior mortgages, liens, or encumbrances, which may be required to be advanced by the Association in order to protect its interests, and the Association shall be entitled to interest computed on the basis of advances made from time to time at the highest legal rate of interest on all such advances.

Section 4.11 All persons, firms, corporations, and other business entities, which shall acquire, by whatever means, any interest in the ownership

of any lot or dwelling unit, or who may be given or who may acquire a mortgage, lien, or other encumbrance of a lot or dwelling unit are hereby placed on notice of the lien rights granted to the Association under this Declaration, and all of such persons, firms, corporations, and other business entities in and to said lot or dwelling unit expressly subject to the lien rights provided herein.

Section 4.12 The lien created pursuant to this Declaration shall be perfected by the recording in the official public records of Volusia County, Florida, of a "claim of lien" stating the description of the property encumbered by the lien, the name of the record owner of the property, the amounts due and the date when the same became due. The lien shall continue in effect until all sums secured by the lien have been fully paid. The claim of lien may include assessments which are due and payable when the claim is made and recorded, plus interest, collection costs, attorneys' fees, and advances to pay taxes and prior encumbrances and interest thereon, all as provided herein. The claim of lien shall be signed and verified by the President or Vice President of the Association. When full payment of all sums secured by such liens is made, the claim of lien shall be satisfied or recorded by the President or Vice President of the Association. The claim of lien filed by the Association shall be subordinate to the lien or any mortgage or any claim or lien if the said mortgage or claim of lien is recorded prior to the Association's claim of lien, and shall likewise be subordinate to any lien filed by KEY COLONY BEACHSIDE Homeowners Association, Inc. pursuant to prior restrictions.

ARTICLE V  
AMENDMENT TERMINATION AND ENFORCEMENT

Section 5.1. The Developer hereby reserves for itself and its assigns the right to amend, modify or rescind such parts of this Declaration as it, in its sole discretion, deems necessary or desirable provided: (a) it is the sole owner of the property to which this Declaration applies, (B) such amendment or modification does not materially or substantially change the character, nature, or general scheme of development of the Subdivision; and (c) written approval is obtained from the St. Johns River Water Management District insofar as such amendment, modification or rescission pertains to the stormwater management system or vegetative natural buffers as permitted in Permit No. [REDACTED]

In addition, to the rights of the Developer reserved in the preceding paragraph, eighty per cent (80%) of the record Owners of Lots in the Subdivision may amend or modify such provisions of this Declaration as they deem necessary or desirable, so long as such amendment or modification does not materially or substantially change the character, nature or general scheme of development of the Subdivision and such amendment or modification does not affect the stormwater management system or vegetative natural buffers. Any such amendment or modification requires the prior written approval from the St. Johns River Water Management District.

Section 5.2 These Covenants and Restrictions may be enforced by an action at law for damages, or a proceeding in equity for an injunction. All costs of enforcement, including reasonable attorneys' fees at trial and on appeal, shall be borne by the violating party.

Section 5.3. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Declaration of Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

#### ARTICLE VI USE OF COMMON PROPERTY

Section 6.1 The common areas, as hereinabove specifically described, or hereafter designated by developer, shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners of lots and dwelling units lying within the Subdivision, as hereinabove described, for the use of such owners and the use of their immediate families, guests, lessees, invitees, and other similarly situated, for all proper and normal residential purposes, for the furnishing of services and facilities for which the same are reasonably intended, and for the quiet enjoyment of said owners.

Section 6.2 The Plat of KEY COLONY Subdivision identifies certain parcels of real property which are dedicated on the Plat to KEY COLONY BEACHSIDE Homeowners' Association, Inc. Ownership of these parcels will



vest in the Association upon the proper recording of the plat. An identification and general description of these parcels of property and their general use is as follows:

Parcel A - First entrance private access way for Lots 1-27.

Parcel B - Second entrance private access way for Lots 29-49.

Parcel C - Third entrance private access way for Lots 50-69.

Parcel D - Retention area.

Parcel E - Retention area.

Parcel F - constitutes the road in the subdivision which is described as Key Colony Court.

Parcel G - Common pedestrian access to Florida Shores Blvd.

Section 6.3 A perpetual nonexclusive easement in favor of all lot owners and dwelling unit owners is hereby specifically created over and upon the roadways identified in Parcel F. This easement runs in favor of all such owners and their families, guests, lessees, invitees and others, all for the use and purpose of providing access to each and every lot and/or dwelling unit owner in the subdivision.

Section 6.4 A perpetual nonexclusive easement in favor of the Lot owners and dwelling owners served by the private access way designed herein is specifically created over and upon the road ways identified in Parcel A, B, and C. This easement runs in favor of all such lot Owners and their families, guests, invitees and others all for the use and purpose of providing access to the lot or dwelling unit utilizing said easment.

Section 6.5 The owners are responsible for the care, maintenance and preservation of said roads, which funds shall be collected by the Association in accordance with Article IV hereof. The Developer will sign a Traffic Control Agreement with the City of Daytona Beach Shores. Each and all of the provisions of said Traffic Control Agreement are expressly incorporated herein

by reference. The use of said roadways identified in Parcel A, B, and C must always be consistent with City, County or State rules and regulations regarding the use of streets and roads. By way of illustration, and not limitation, vehicles must be operated by licensed drivers and all terrain vehicles or other similar off-road vehicles may not be operated upon the roadways in the subdivision identified in Parcel A, B, and C. Notwithstanding, nothing shall interfere with the designation of said roadways as private roads allowing the Homeowners' Association to erect and maintain security gates at the entrance into the subdivision at Florida Shores Boulevard. In similar fashion as maintenance of the roads, maintenance of the security gates, if provided, shall be assessed to all owners pursuant to Article IV.

ARTICLE VII  
COVENANTS AGAINST PARTITION  
AND  
SEPARATE TRANSFER OF COMMON AREA

Recognizing that the full use and enjoyment of any lot or dwelling unit within KEY COLONY Subdivision is dependant upon the use and enjoyment of the common areas and the improvements made thereto, and that it is in the interests of all of the owners that the ownership of the common areas be retained by the Association. In addition, there shall exist no right to transfer the owners' interest in the Association in any other manner as an appurtenance to and in the same transaction with, a transfer of title to the lot or dwelling unit in KEY COLONY Subdivision provided, however, that nothing herein shall preclude a conveyance by the Developer herein of any undivided interest in the common areas to the Association for the purpose of effectuating the intent of this Declaration.

ARTICLE VIII  
COVENANTS TO RUN WITH LAND

The restrictions and burdens imposed by the provisions and covenants of this Declaration shall constitute covenants running with the said land, and each covenant and restriction shall constitute an equitable servitude upon the heirs, personal representatives, successors and assigns of each Owner, and

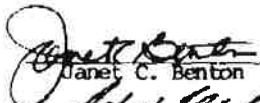
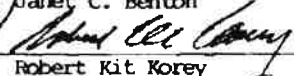
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Diane M. Matousek  
Volusia County, Clerk of Court

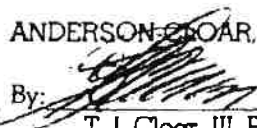
the same shall like wise be binding upon the Developer and its successors and assigns. This Declaration shall be binding and in full force and in effect for a period of fifty (50) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive ten (10) year periods, unless an instrument, signed by eighty percent (80%) of the then Owners of the Lots in Key Colony Subdivision, is recorded containing an agreement of the said Owners with respect to the alteration, change, modification, or repeal, in whole or in part, of the provisions of this Declaration, provided the Declaration has first been released by the City Commission of the City of Daytona Beach Shores. Notwithstanding any provision to the contrary contained in these Covenants and Restrictions, it is the expressed intention that the management, operation and repair of the surface water or stormwater management system, as described in this Declaration shall be binding and in full force and in effect for perpetuity.

IN WITNESS WHEREOF, the Developer has hereunto set its hand and seal the day and year first above written.

WITNESSES:

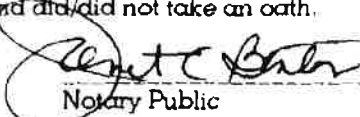
ANDERSON-CLOAR, INC.

  
Janet C. Benton  
  
Robert Kit Korey

By:   
T. J. Cloar, III, President  
(CORP. SEAL)

STATE OF FLORIDA )  
COUNTY OF VOLUSIA )

The foregoing instrument was acknowledged before me this 18th day of January, 1996 by T.J. Cloar, III, President of ANDERSON-CLOAR, INC., a Florida corporation, on behalf of said corporation. He is personally known to me and ~~did~~ did not take an oath.

  
Notary Public  
State of Florida at Large  
My Commission No:  
My Commission Expires:

