

# **SECOND AMENDMENT TO AND REFORMATION OF DECLARATION OF CONDOMINIUM AND TIMESHARE DECLARATION**

This Amendment to and Reformation of Declaration of Condominium and Time Share Declaration ("Amendment") is made as of February 19, 1999 by **NEPTUNE REALTY CORP.** ("Neptune Realty") and **N.T.R., LTD.** ("N.T.R.").

Reference is made to that certain Declaration of Condominium of Neptune House Condominium ("Condominium Declaration") dated December 31, 1985 and recorded with the New Shoreham Records of Land Evidence in Volume 72, Page 62, as amended by that certain Neptune House Condominium Amendment to Declaration dated June 14, 1990 and recorded with said Land Evidence Records in Volume 116, Page 117 and that certain Time Share Declaration of Neptune House Condominium ("Time Share Declaration") dated December 15, 1985 and recorded with said Land Evidence Records in Volume 72, Page 26, as amended by that certain Neptune House Condominium Amendment To Time Share Declaration dated June 14, 1990 and recorded with said Land Evidence Records in Volume 116, page 122 (collectively, the "Condominium Documents"), relating to that certain land and improvements thereon located at 100 Connecticut Avenue, New Shoreham, Rhode Island, and commonly known as the **NEPTUNE HOUSE** (the "Project").

Whereas, the Condominium Documents, which

- (i) created and established the Project pursuant to R.I. Gen Laws §34-36.1-1.01 et. seq.
- (ii) identified Neptune Realty as the original declarant and owner in fee simple of the Project and underlying real estate, and
- (iii) immediately converted the Project into a time share property pursuant to RT. Gen. Laws §34-41-1.01 et. seq., contain certain errors and omissions as more particularly described below'; and

Whereas, **Neptune Realty** wishes to correct and clarify said errors and omissions; and

Whereas, the documents referenced above amended the Condominium Documents by

- (i) substituting N.T.R. as successor to the declarant and as the new owner in fee simple of the unsold time share units in the Project, and
- (ii) adding an additional nine (9) units to the fourteen (14) units already existing in the Project; and

Whereas, said amendments also contain certain errors and omissions as more particularly described below; and

Whereas, **Neptune Realty** and **N.T.R.** wish to reform said amendments and ratify and confirm the Condominium Documents as amended herein so that good, record and marketable title shall vest in all of the owners of timeshare units of the Project.

Now, therefore, **Neptune Realty** and **N.T.R.** hereby reform and amend the Condominium Documents as follows:

### **1. Order of Recording**

On December 31, 1985, the original Condominium Documents were inadvertently submitted to and recorded by the New Shoreham Town Clerk in reverse order such that the Time Share Declaration was recorded with the New Shoreham Land Evidence Records prior to the Condominium Declaration. As a result, the units of the Project were divided into timeshare interests, pursuant to the former recorded declaration, before the units themselves were created, pursuant to the latter recorded declaration. Notwithstanding the foregoing, said reverse order of recording of the Condominium Documents does and shall not be deemed to affect the validity and enforceability of same, nor the validity of the creation and establishment of all of the existing units of the Project. Similarly, the mistaken attachment of the "Exhibit F Neptune House Association Rules and Regulations - Time Share Ownership" to the Condominium Declaration in lieu of the Time Share Declaration does and shall not be deemed to affect the applicability of the contents of said Exhibit "F" to the owners of time share units or otherwise affect the validity and enforceability of the Exhibit. In order to correct such errors, the Condominium Declaration had been originally recorded just prior to the Time Share Declaration and Exhibit "F" to the Condominium Declaration shall be deemed to have been affixed to the Time Share Declaration.

### **2. Number of Units**

Article 1 of the Condominium Declaration and Article 27 of the Time Share Declaration establish a maximum of nineteen (19) condominium units in the Project. Notwithstanding the aforementioned Articles, the nine (9) additional units created by the amendments to the Condominium Documents brought the total number of units to twenty-three (23), or four (4) units in excess of the maximum number originally established under the Condominium and Time Share Declarations. The amendments further reserved the right of the declarant to create an additional eleven (11) units to the Project, for an overall total of thirty-four (34) units. Currently, there exist twenty-three (23) units in the Project. Accordingly, this Amendment hereby supersedes the aforementioned contradictory provisions contained in the Condominium Documents and clarifies and confirms that the maximum number of units permitted in the Project is and shall be twenty-three (23) units, and that all of the units listed on the attached Exhibit A shall be deemed to be and to have been validly incorporated in and made a part of the Project.

### **3. Unit 13 References**

Notwithstanding any contrary provision of the Condominium Documents, there is no existing unit 13 in the Project. Although the Condominium Declaration and the Timeshare Declaration indicate that the first fourteen (14) units created under the Condominium Documents were numbered 1 through 14, inclusive of a number 13, the amendments to these documents correctly indicate that the original fourteen (14) units of the Project were numbered 1 through 12, 14 and 15, and that the nine (9) units subsequently created by the amendments to the Condominium Documents were numbered 16 through 24.

Accordingly, any reference to a "Unit 13" in the Condominium Documents hereby is deleted, and this Amendment clarifies and confirms that the units of the Project are and shall be numbered 1 through 12, and 14 through 24. The correct condominium unit numbers and corresponding percentage interest of each condominium unit in the common elements appurtenant to same is shown on the Exhibit A attached hereto, which Exhibit amends and replaces the Exhibit B attached to the amendment to the Timeshare Declaration.

### **4. Fixed and Flexible Weeks**

While each condominium unit consists of twenty-six (26) "fixed" time share week interests and twenty-six (26) "flexible" time share week interests, or a total of fifty-two (52) weeks (inclusive of a maintenance week, as described below), the relevant portions of the applicable Articles of, and Exhibits to, the Condominium Documents which were intended to define and describe all of the time share interests as either "fixed" or "flexible" are ambiguous or inconsistent. Accordingly, this Amendment clarifies and confirms that, notwithstanding any contrary provision of the Condominium Documents, the so-called "Flexible Time Share Season" has consisted, and shall continue to consist, of twenty-six (26) time share weeks, running from January through April and from the last week of October through December. Similarly, the so-called "Fixed Time Share Season" has consisted and shall continue to consist, of twenty-six (26) time share weeks, running from May through all but the last week of October. A list describing all of said time share weeks as either "fixed" or "flexible" is attached hereto as an Exhibit B to this Amendment.

### **5. Percentage Interest**

Notwithstanding any contrary provision of the Timeshare Declaration, each timeshare deed conveys a 1/51st interest of the subject unit. As noted in the amendment to the Timeshare Declaration, one week of every year is reserved for maintenance purposes and during such time each unit, as applicable, remains unoccupied. Accordingly, this Amendment clarifies and confirms that every unit owner of a timeshare interest owns a 1/51st interest in the relevant condominium unit and each condominium unit owns a 1/23rd interest in the entire Project.

Except as amended herein, the Condominium Documents are and shall remain unmodified and in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, **Neptune Realty** and **N.T.R.** have caused this Amendment to be duly executed as of the day and year first above written.

**NEPTUNE REALTY CORP.**

*Thomas S. Hemmendinger*, Permanent Receiver

**N.T.R., LTD.**

*Thomas S. Hemmendinger*, Permanent Receiver

STATE OF RHODE ISLAND COUNTY OF PROVIDENCE

In Providence, on the 19th day of February, 1999, before me, personally appeared the above-named Thomas S. Hemmendinger, known to me to be the Permanent Receiver of **Neptune Realty Corp.** and **N.T.R., LTD.**, and acknowledged the foregoing instrument to be his free act individually and in his capacity as aforesaid and deed and the free act and deed of said **Neptune Realty Corp.** and said **N.T.R., LTD.**

*NOTARY PUBLIC*

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## **Exhibit A**

**NEPTUNE HOUSE CONDQMINIUM**

**New Shoreham, Rhode Island**

PERCENTAGE INTERESTS IN COMMON ELEMENTS APPURTENANT TO UNITS	
UNIT	INTEREST
<b>01</b>	1/23
<b>02</b>	1/23
<b>03</b>	1/23
<b>04</b>	1/23
<b>05</b>	1/23
<b>06</b>	1/23
<b>07</b>	1/23
<b>08</b>	1/23
<b>09</b>	1/23

<b>10</b>	1/23
<b>11</b>	1/23
<b>12</b>	1/23
<b>14</b>	1/23
<b>15</b>	1/23
<b>16</b>	1/23
<b>17</b>	1/23
<b>18</b>	1/23
<b>19</b>	1/23
<b>20</b>	1/23
<b>21</b>	1/23
<b>22</b>	1/23
<b>23</b>	1/23
<b>24</b>	1/23

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## **EXHIBIT B**

### **NEPTUNE HOUSE CONDOMINIUM New Shoreham, Rhode Island**

<b>DESCRIPTION OF TIME SHARE WEEKS</b>		
<b>TIME SHARE WEEK</b>	<b>MONTH</b>	<b>TYPE OF USE</b>
<b>01</b>	Jan	Flexible
<b>02</b>	Jan	Flexible
<b>03</b>	Jan	Flexible
<b>04</b>	Jan	Flexible
<b>05</b>	Jan	Flexible
<b>06</b>	Feb	Flexible
<b>07</b>	Feb	Flexible
<b>08</b>	Feb	Flexible
<b>09</b>	Feb	Flexible

<b>10</b>	Mar	Flexible
<b>11</b>	Mar	Flexible
<b>12</b>	Mar	Flexible
<b>13</b>	Mar	Flexible
<b>14</b>	Apr	Flexible
<b>15</b>	Apr	Flexible
<b>16</b>	Apr	Flexible
<b>17</b>	Apr	Flexible
<b>18</b>	May	Fixed
<b>19</b>	May	Fixed
<b>20</b>	May	Fixed
<b>21</b>	May	Fixed
<b>22</b>	Jun	Fixed
<b>23</b>	Jun	Fixed
<b>24</b>	Jun	Fixed
<b>25</b>	Jun	Fixed
<b>26</b>	Jul	Fixed
<b>27</b>	Jul	Fixed
<b>28</b>	Jul	Fixed
<b>29</b>	Jul	Fixed
<b>30</b>	Jul	Fixed
<b>31</b>	Aug	Fixed
<b>32</b>	Aug	Fixed
<b>33</b>	Aug	Fixed
<b>34</b>	Aug	Fixed
<b>35</b>	Aug	Fixed
<b>36</b>	Sep	Fixed
<b>37</b>	Sep	Fixed
<b>38</b>	Sep	Fixed
<b>39</b>	Sep	Fixed

<b>40</b>	Oct	Fixed
<b>41</b>	Oct	Fixed
<b>42</b>	Oct	Fixed
<b>43</b>	Oct	Fixed
<b>44</b>	Nov	Flexible
<b>45</b>	Nov	Flexible
<b>46</b>	Nov	Flexible
<b>47</b>	Nov	Flexible
<b>48</b>	Dec	Flexible
<b>49</b>	Dec	Flexible
<b>50</b>	Dec	Flexible
<b>51</b>	Dec	Flexible
<b>52</b>	Dec	Flexible

RECEIVED FOR RECORD IN NEW SHOREHAM, R.I.

DATE: Feb 22, 1999

TIME: 12:31

By *Susan R. Shea*, Town Clerk