

Prepared By and Return to:
EDWARD A. KALISH, Esquire
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Suite 400, 999 Brickell Avenue
Miami, Florida 33131

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DECLARATION OF CONDOMINIUM
FOR
HORIZON SOUTH, A CONDOMINIUM

South Atlantic Financial Corp., a Florida corporation,
herein called the "Declarant", makes the following declarations:

1. Purpose. The purpose of this Declaration is to submit the land and improvements described to the condominium form of ownership and use in the manner provided in Chapter 718 of the Florida Statutes, herein called the "Condominium Act". Except where permissive variations therefrom appear in this Declaration, and annexed By-Laws, and/or the Articles of Incorporation for Horizon South Condominium Association, Inc., a Florida corporation not-for-profit, or in lawful amendments to these instruments, the provisions of Chapter 718, supra, including the definitions therein contained, are adopted herein by express reference as if set forth in haec verba, and said statute as amended from time to time, and this Declaration, the annexed By-Laws, and the Articles of said corporation, as lawfully amended from time to time, shall govern this Condominium and the rights, duties and responsibilities of owners of condominium units therein.

2. Name. The name by which this condominium is to be identified is Horizon South, a Condominium, (the "Condominium").

3. Pro ert submitted to Condominium Form of Ownership.
The following property is hereby submitted to the condominium form of ownership:

- (a) The Land. The lands, owned by the Declarant, lying and being situate in Bay County, Florida, as more particularly set forth in Exhibit "A," attached hereto, which lands are herein called "the Land".
- (b) The Improvements. Thirteen (13) structures containing seventy-six (76) condominium units and all common elements appurtenant thereto.

4. Definitions. The terms used in this Declaration and in its exhibits, including the Articles of Incorporation and By-Laws of Horizon South Condominium Association, Inc., shall be defined in accordance with the provisions of Section 718.103 of the Condominium Act, and as follows unless the context otherwise requires.

- (a) "Assessment" means a share of the funds required for the payment of common expenses, which from time to time is assessed against a unit owner.
- (b) "Association", "Condominium Association" or "Corporation" means Horizon South Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of the Condominium.

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- (c) "Board of Administration" or "Board of Directors" or "Board" means the Board of Directors of Horizon South Condominium Association, Inc., which Board is responsible for the administration of the Association.
- (d) "By-Laws" means the by-laws of the Association existing from time to time.
- (e) "Co-Tenant" means an Owner owning a Condominium Parcel jointly with another owner.
- (f) "Common Elements" means the portions of the condominium property not included in the units and such items listed in Section 718.108 of the Condominium Act and such other items as herein-after included in the definition of common elements.
- (g) "Common Expenses" means all expenses and assessments properly incurred by the Association for the Condominium, including but not necessarily limited to:
 - (i) Expenses of administration, operation, and management of condominium property and property owned by the Association;
 - (ii) Expenses of maintenance, operation, repair or replacement of common elements;
 - (iii) Expenses and amounts due under the Recreation Agreement;
 - (iv) Expenses and amounts due under the Easement Agreement;
 - (v) Expenses declared common expenses by the provisions of this Declaration or the By-Laws;
 - (vi) Any valid charge against the condominium as a whole.
- (h) "Common Surplus" means the excess of all receipts of the Association, including, but not necessarily limited to, assessments, rents, profits and revenues on account of the common elements, over the common expenses of the Association and Condominium.
- (i) "Condominium Parcel" means a unit, together with the undivided share in the common elements which is appurtenant to the unit.
- (j) "Condominium Property" means the lands and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

- (k) "Declarant" or "Developer" means South Atlantic Financial Corp., a Florida corporation, its successors and assigns, the entity which is offering Condominium Parcels for sale in the ordinary course of business.
- (l) "Institutional Mortgage" means a mortgage owned or held by an Institutional Mortgagee.
- (m) "Institutional Mortgagee" means the owner and holder of a mortgage encumbering a condominium parcel, which owner and holder of said mortgage is either a bank, life insurance company, Federal or State savings and loan, Mortgage or Real Estate Investment Trust, mortgage banker, union pension fund, institutional mortgage broker, or a lender generally recognized as an institutional type lender or the Declarant, its assignees or nominees.
- (n) "Limited Common Elements" means those common elements which are reserved for the use of a certain condominium unit or units to the exclusion of other units, as specified herein.
- (o) "Member" means an owner or co-tenant who, or which is a member of Horizon South Condominium Association, Inc.
- (p) "Recreation and Common Areas Agreement" or "Recreation Agreement" means the agreement recorded in the Public Records of Bay County, Florida, a true and correct copy of which is attached hereto as Exhibit "F," establishing the interest of the Association in and to the Recreational Facilities.
- (q) "Recreational Facilities" means the facilities, land, and improvements provided under the Recreation Agreement; also referred to as "Recreation Property".
- (r) "Recreational Facilities Owner" means the owner of the Recreational Property under the Recreation Agreement.
- (s) "Unit" or "Condominium Unit" or "Apartment" means a part of the Condominium Property which is subject to exclusive ownership; said unit being a unit space designated as "condominium unit" or "unit" on the plot plan, survey and graphic descriptions attached hereto and marked Exhibit "B".
- (t) "Unit Owner" or "Owner" means the person or entity owning a Condominium Parcel.
- (u) "Utility Services" means, but is not limited to, electric power, gas, water, heating, air-conditioning, sewage and garbage disposal and trash removal.

5. Condominium and Unit Identification. The Condominium Parcels and all other improvements constructed on the Condominium Property ~~are set forth~~ in detail in Exhibit "B" attached hereto and made a part hereof. Each Condominium Parcel is described in said plan in such manner that there can be determined therefrom the identification, location, and dimensions of such unit, as well as of the common elements appurtenant thereto.

Each Condominium Parcel is identified by a number, letter, or name, or combination thereof, as shown on the plans attached hereto as Exhibit "B" and made a part hereof, so that no unit bears the same designation as does any other unit.

6. Easements. Each of the following easements is a covenant running with the land of the Condominium, for the benefit of all Condominium Parcel Owners, their respective mortgagees, pledgees, heirs, personal representatives, successors and assigns, to-wit:

- (a) Utilities. An easement shall exist for Utility Services as may be required in order to adequately serve the Condominium Property; provided, however, easements through a Unit shall be only according to the plans and specifications for the building containing the Unit or as the building is actually constructed, unless approved, in writing, by the Unit Owner. Any portion of the common elements including end walls and outside walls of Units may be used for housing electric meters, meter closets, meter rooms, water meters, hose bibs, and other electrical and water meters and boxes that may be necessary to any Unit within the Condominium.
- (b) Traffic. An easement for ingress and egress shall exist for pedestrian traffic over, through, across and upon streets, sidewalks, paths, walks, lawns, lakes, halls, lobbies, and other portions of the common elements as may be from time to time intended and designated for such purposes and use; and for vehicular and pedestrian traffic over, through, across and upon such portions of the common elements as may from time to time be paved and intended for such purposes, and such easement shall be for the use and benefit of the Unit Owners, and their institutional mortgagees, pledgees, heirs, personal representatives, successors, guests, lessees, invitees, employees, servants and assigns; provided, however, nothing herein shall be construed to give or create in any person the right to park automobiles, trailers, mobile homes, campers, or any other vehicles upon any portion of the Condominium property except to the extent that space may be specifically designated and assigned for such parking purposes.
- (c) Easement for Unintentional and Non-Negligent Encroachments. If a Unit shall encroach upon any common element, or upon any other Unit, by reason of original construction or by the non-purposeful or non-negligent act of the Unit Owner or Declarant, then an easement appurtenant to such encroaching Unit to the extent of such encroachment shall exist so long as such encroachment shall exist. If any common element shall encroach upon any Unit by reason of original construction or the non-purposeful or non-negligent act of the Association or the Declarant, then an easement appurtenant to such common element to the extent of such encroachment shall exist so long as such encroachment shall exist.

- (d) Support. The Declarant and Association hereby grant to each other, their heirs, executors, successors, assigns and mortgagees and all third party beneficiaries, including Condominium Unit Owners, their lessees, guests, invitees, servants and employees, the right of support for all structures on any portion of the real property of the Condominium.
- (e) Ingress and Egress. A nonexclusive easement for ingress and egress over, through, across and upon the streets, walks and other rights-of-way serving the units in the Condominium, as part of the common elements, as is necessary or required so as to provide reasonable access to the public ways adjacent to the Condominium property.

7. Common Elements. Common elements as hereinabove defined shall include within its meaning, in addition to the items as listed in Section 718.108 of the Condominium Act, the following items:

- (a) An exclusive easement for the use of the air space occupied by the Condominium Unit as it exists at any particular time as the unit may lawfully be altered.
- (b) Cross-easements for ingress, egress, support, maintenance, repair, replacement and utilities.
- (c) Easements or encroachments by the perimeter walls, ceilings and floors surrounding each Condominium Unit caused by the settlement or movement of the building or caused by minor inaccuracies in building or rebuilding which now exist or hereafter exist, and such easements shall continue until such encroachment no longer exists.
- (d) Easement for overhanging troughs or gutters, downspouts, and the discharge therefrom of rain water and the subsequent flow thereof over condominium units or any of them.
- (e) All parking spaces are hereby deemed to be common parking spaces for the purpose of Unit Owners, their guests, employees, servants, Institutional Mortgagees and visitor parking. A Unit Owner shall not partition off in any manner whatsoever any parking space including, but not limited to, using partial walls or screening, hedges or shrubbery, without the prior written consent of the Condominium Association; provided however, the Declarant shall have the right to do any of the foregoing without the consent of the Condominium Association. Declarant, so long as it has Units for sale in the Condominium, shall have the right to use parking spaces or a portion of the common elements and Condominium Property for parking for prospective Unit purchasers and such other parties as Declarant reasonably determines.

8. Ownership of Common Elements and Restrictions Thereto. The owner of each Unit shall own a certain interest in the Condominium Property which are appurtenant to his Unit, which include, but are not limited to, the following items which are appurtenant to the several units, as indicated:

- (a) Common Elements. The undivided shares, stated as percentages in the common elements appurtenant to each of the Condominium Units is set forth on Exhibit "C", attached hereto and made a part hereof by reference.
- (b) Association. The membership of each Unit Owner in The Association and the interest of each Unit Owner in the funds and assets held by the Association.
- (c) Common Surplus. Each Unit Owner shall own any common surplus of this Condominium in the same percentage as the common expenses appurtenant to each Unit are shared as set forth in Exhibit "C". However, this ownership does not include the right to withdraw or require payment or distribution of the same, inasmuch as common surplus shall constitute advance payment of estimated monthly maintenance and shall be applied in reduction thereof for the next ensuing monthly maintenance payment during the fiscal year. Any reduction as aforementioned shall be allocated over the next succeeding fiscal year.

9. Common Expenses. The common expenses of the Condominium shall be shared by the Unit Owners as specified and set forth in Exhibit "C." The foregoing ratio of sharing common expenses and assessments shall remain, regardless of the purchase price of the various Condominium Units, their locations, or the building square footage included in each Condominium Unit.

10. Governing Body. The affairs of the Condominium shall be conducted by a corporation incorporated pursuant to the Florida Statutes governing corporations not for profit. The name of the corporation to conduct the affairs of the Condominium shall be the Horizon South Condominium Association, Inc. A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit "D" and made a part hereof and a copy of the By-Laws of the Association are attached hereto as Exhibit "E" and made a part hereof.

Unit Owners, upon the recordation of a deed of conveyance for their Condominium Parcel in the Public Records of Bay County, Florida, shall automatically become members of the Association and such membership shall automatically terminate when such persons have divested themselves of such ownership.

An owner or owners of a single Condominium Parcel shall collectively be entitled to one (1) vote, which vote shall be cast by the voting member. The foregoing shall include the Declarant who shall be deemed to be the owner of each unsold unit and therefore, the Declarant shall be entitled to one (1) vote for each Unit owned by the Declarant. If a Unit is owned by one person, his right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation or other entity, the person entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the president or vice-president and attested by the secretary or assistant secretary of the corporation, or if another entity, then by the authorized officer or agent of said entity, 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 Unit concerned. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any Owner thereof.

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A person or entity owning more than one (1) Condominium Parcel may be designated as a voting member for each such Condominium Parcel which it or he owns. The Declarant shall be deemed an Owner and voting member of and for each unsold Condominium Parcel. Failure by all Owners of any single Condominium Parcel to file the aforementioned written statement with the secretary prior to a members' meeting will result in depriving such owners of a single Condominium Parcel of a vote at such meeting; provided, however, during such time as the Declarant shall be deemed an owner and voting member of and for any unsold Condominium Unit, it shall not be required to file the aforementioned written statement with the secretary prior to a members' meeting.

All the affairs, policy, regulations and property of the Association shall be controlled and governed by the Board of Directors of the Association, consisting of voting members.

The Association shall have all of the powers and duties reasonably necessary to operate this Condominium as set forth in this Declaration, the By-Laws, and the Articles of Incorporation of the Association, and as the same may be amended, and shall also have all the powers and duties of an association, as set forth in the Condominium Act, as well as all powers, and duties granted to or imposed upon it by this Declaration, including:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein, or for making emergency repairs therein necessary to prevent damage to the common elements or to another Unit.
- (b) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners at all reasonable business hours.
- (c) The power and duty to enter into the Recreation Agreement, to enter into contracts with others for a valuable consideration, for vending machines and for the maintenance and management of the subject Condominium Property, including the normal maintenance and repairs of the common elements, and in connection therewith to delegate the powers and rights herein contained, including that of making and collecting assessments, perfecting liens for non-payment, etc. The service and maintenance contracts referred to herein may delegate to the service company the duty and responsibility to maintain and preserve the landscaping, gardening, painting, repairing and replacement of the common elements, but shall not relieve the Unit Owner from his personal responsibility to maintain and preserve the interior surface of his Condominium Unit and to paint, clean, decorate, maintain and repair the individual Condominium Unit.

Each Unit Owner, his heirs, personal representatives, successors, and assigns, shall be bound by any such management agreement or amendments or revisions thereof to the same extent and effect as if he had executed such management agreement for the purposes herein expressed, including but not limited to adopting, ratifying, confirming and consenting to the execution of same by the Association; covenanting

and promising to perform each and every of the covenants, promises and undertakings to be performed by Unit Owners as required under said management agreement, acknowledging that all of the terms and conditions thereof, including the manager's fee, are reasonable, and agreeing that the persons acting as directors and officers of the Association entering into such an agreement have not breached any of their duties or obligations to the Association.

- (d) The power to adopt reasonable rules and regulations for the maintenance and conservation of the Condominium Property, and for the health, comfort, safety and welfare of the Unit Owners, all of whom shall be subject to such rules and regulations.
- (e) The power to make and collect assessments.
- (f) The power to lease, maintain, repair and replace the common elements.
- (g) The power to purchase Condominium Units in the Condominium and to acquire and hold, lease, mortgage and convey them.
- (h) To grant or contract for easements, licenses and other privileges and duties on behalf of the membership where no members' rights are substantially affected.
- (i) To modify or move any easement for ingress and egress or for the purposes of utilities if the easement constitutes part of or crosses the Condominium Property; provided, however, the foregoing shall not authorize the Association to modify or move any easement created in whole or in part for the use or benefit of anyone other than the Unit Owners, or crossing the property of anyone other than the Unit Owners, without their consent or approval as required by law or by the instrument creating the easement.
- (j) The authority and power to enter into the Easement Agreement which is attached hereto as Exhibit "F".

11. Maintenance, Alterations and Improvements. The responsibility for the maintenance of the Condominium Property and restrictions upon its alteration and improvement shall be as follows:

- (a) By the Association. The Association shall maintain, repair and replace at the Association's own expense:
 - (1) All common elements.
 - (2) All portions of the Units (except interior wall surfaces) contributing to the support of the buildings, which portions shall include, but not be limited to, the outside walls of the buildings, and load-bearing columns.
 - (3) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of the Unit contributing to the support of the buildings or within interior boundary walls, and all such facilities contained within a Unit which service part or parts of the Condominium other than the Unit within which contained.

- (4) All incidental damage caused to a Unit by such work shall be promptly repaired at the expense of the Association.
 - (5) All property owned by the Association, including any recreational facilities, lands, and improvements and all property under the Easement Agreement.
- (b) the Condominium Unit Owner. The responsibility the Unit Owner shall be as follows:
- (1) To maintain, repair and replace at his expense all portions of the Unit except the portions to be maintained, repaired and replaced by the Association. Included within the responsibility of the Unit Owner shall be windows, screens and doors opening into or onto his unit, sliding glass doors and plate glass. All such maintenance, repairs and replacement shall be done without disturbing the rights of other Unit Owners.
 - (2) To maintain, repair and replace at his own expense his individual air-conditioning and heating system inside and outside his individual Condominium Unit.
 - (3) Within the Unit to maintain, repair and replace at his expense all fans, stoves, refrigerators, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage, and sanitary service to his Condominium Unit. The floor and interior walls of any terrace, balcony, sun deck, carport, or loggia, attached to or forming a part of a Unit shall be maintained by the Unit Owner thereof at his own expense.
 - (4) Not to paint, or otherwise decorate or change the appearance of any portion of the exterior of the building, including the terraces, balconies, sun decks, loggias, carports, or any stucco portion of the Unit or the color and design of the framing and screening thereof.
 - (5) To promptly report to the Association any defects or need for repairs, the responsibility for the remedy of which is that of the Association.
 - (6) No Unit Owner other than the Declarant shall make any alterations in the portions of the buildings which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do any work which would jeopardize the safety or soundness of the buildings or impair any easement without first obtaining approval from the Board of Directors of the Association.
- (c) Alteration and Improvement. There shall be no material alterations or substantial additions to ~~the common elements~~ except as same are authorized by the Board of Directors and ratified by the

affirmative vote of voting members casting not less than seventy-five percent (75%) of the total votes of the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose. The cost of the foregoing shall be assessed as common expenses of this Condominium. Where any alterations or additions as aforescribed are exclusively or substantially exclusively for the benefit of the Unit Owner(s) requesting same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively or substantially exclusively benefiting, and the assessment shall be levied in such proportion as may be determined as fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively or substantially exclusively benefit Unit Owners requesting same, said alterations or additions shall be made only when authorized by the Board of Directors and ratified by not less than seventy-five percent (75%) of the total votes of the Unit Owners exclusively or substantially exclusively benefiting therefrom, and where said Unit Owners are ten or less, the approval of all but one shall be required.

- (d) Enforcement of Maintenance. In the event a Unit Owner fails to maintain his Unit as required above, the Association, Declarant, or any other Unit Owner shall have the right to proceed in a court of equity to seek compliance with the foregoing provisions, or the Association shall have the right to assess the Unit Owner and the Unit for the necessary sums to put the improvements within the Unit in good condition. After such assessment, the Association shall have the right to have its employees or agents enter the Unit and do the necessary work to enforce compliance with the above provision.

Further, in the event a Unit Owner violates any of the provisions of this Paragraph, the Declarant and/or the Association shall have the right to take any and all such steps as may be necessary to remedy such violation, including, but not limited to, entry of the subject Unit with or without consent of the Unit Owner.

12. Assessments and Condominium Working Capital. At the time the Declarant sells and closes a Condominium Unit to a purchaser (purchaser thereby becoming a Unit Owner of this Condominium) the purchasers shall deposit an amount equal to two times purchaser's monthly assessment for common expenses, said sum to be deposited with the Condominium working capital fund for the purpose of initial maintenance, reserve, initial and non-recurring items, capital expenses, permits, licenses and all utility deposits and advance insurance premiums for insurance policies and coverages pursuant to this Declaration, which may be referred to as "Condominium Working Capital". If Declarant has paid any of the foregoing expenses or items, then any such expenses or item shall be paid to or reimbursed to the Declarant from the Condominium Working Capital fund. The Condominium Working Capital fund may be commingled by the Association with any of its other funds.

The commencement of payment of common expenses by Unit Owners shall be at such time as the Declarant notifies Unit Owners of the commencement date of payment of monthly common expenses, provided same shall not commence later than the first day of the month following the month in which the first Condominium Unit is conveyed by the Declarant to a bona fide purchaser. Prior to the time that maintenance payments are commenced for the Condominium, all maintenance expenses shall be paid from the Condominium Working Capital fund and all utility deposits and advance insurance premiums for insurance policies and coverages pursuant to this Declaration and exhibits attached hereto shall be paid from the Condominium Working Capital fund.

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After the commencement date of payment of monthly common expenses, in the event there are unsold Units, the Declarant retains the right to be the Owner of said unsold Units; however, for such time as the Declarant continues to be a Unit Owner, but not exceeding one year from the date on which the first Condominium Unit is conveyed by the Declarant to a bona fide purchaser, during which one year period Declarant hereby guarantees to each Unit Owner that the assessment for common expenses of the Condominium imposed upon each Unit Owner shall not increase over \$73.17 monthly or \$878.04 annually for a Type A Unit, \$83.80 monthly or \$1,005.60 annually for a Type B Unit, \$37.95 monthly or \$455.40 annually for a Type C Unit, and \$75.75 monthly or \$909.00 annually for a Type D Unit, the Declarant shall be required to contribute only such sums to the common expenses of the Condominium as incurred and required during that period which have not been produced by assessments at the guaranteed level receivable from other Unit Owners, as may be required for the Condominium Association to maintain the Condominium. Subject to the guarantee by Declarant as aforesaid, the Declarant shall not be required to contribute to the common expenses as to the Units owned by it in any amount exceeding the obligation for such Unit as specified and set forth in this Declaration and Exhibits attached hereto. Commencing on the expiration of the period of the guaranteed level of assessments as aforesaid, Declarant shall contribute to the common expenses, as to the Units owned by it, in the same manner as all other Unit Owners. Notwithstanding the foregoing, in the event the Declarant is the Owner of Condominium Units during the guaranteed period as aforesaid, and if such unit is leased and occupied by a third party, then the maintenance of said Unit shall be contributed and borne by the Declarant as all other Unit Owners.

The provisions of this Paragraph 12 are paramount to and superior to the provisions of Paragraph 9 and 13 of this Declaration as to the matters set forth in this paragraph.

13. Assessments, Liability, Priority, Interest, Collection. Common expenses shall be assessed by the Association against each Condominium Parcel as provided in paragraph 9 above. Assessments and installments that are unpaid for over ten (10) days after due date shall bear interest at the rate of fifteen percent (15%) per annum from due date until paid, and at the sole discretion of the Board of Directors, a late charge of \$25.00 shall be due and payable.

The Board of Directors of the Association may take such action as they deem necessary to collect assessments, by personal action or by enforcing and foreclosing the lien hereinafter provided and may settle and compromise same if in the best interest of the Association. The delinquent members shall pay all costs, including reasonable attorneys' fees incident to the collection of such assessments or enforcement of such lien. In any lien foreclosure, the Unit Owner may be required to pay a reasonable rental for continued occupancy or use of the Condominium Parcel, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect same. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien and to apply against said bid sums due the Association for assessments, interest and collection costs.

As to priority between the lien of a recorded mortgage and the lien for an assessment, the lien for assessment shall be subordinate and inferior to any recorded Institutional Mortgage regardless of when said assessment was due, but not to any other mortgage. The Association shall maintain a register of Institutional Mortgagees and shall give such mortgagees notice, in writing, of all notices given by the Association to the Owner of such Condominium Unit encumbered by such Institutional Mortgage.

If the mortgagee of an Institutional Mortgage of record, or the Declarant or any other purchaser or purchasers of a Condominium Parcel obtains title to the Condominium Parcel as a result of the foreclosure of the first mortgage, or by voluntary conveyance in lieu of such foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of common expenses or assessments by the Association pertaining to such Condominium Parcel or chargeable to the former owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or voluntary conveyance in lieu of said foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. The unpaid shares of common expenses or assessments shall be deemed to be common expenses collectable from all of the Owners of Condominium Units in the Condominium, including such acquirer and his successors and assigns. It is understood that such acquirer shall be liable for his share of common expenses or assessments attributable to his Condominium Parcel from the date of acquiring said Condominium Parcel.

In furtherance of said grant of authority to the Association to make, levy, and collect assessments to pay the costs and expenses for the operation, maintenance and management of the Condominium, the following provisions shall be operative and binding upon the owners of all Condominium Units, to-wit:

- A. The Board of Directors of the Association shall establish an annual budget, in advance, for each fiscal year, which shall correspond to the calendar year, and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. As a common expense of the Association, there shall be included the cost and expenses of the Recreation Agreement and Easement Agreement and the cost of maintaining leasehold, easements, memberships, and other possessory use or fee interests in the lands or facilities, including, but not limited to, country clubs, tennis and golf clubs, marinas, and other recreational and communal facilities, whether or not contiguous to the lands of the Condominium, to provide enjoyment, recreation, or other use or benefit to the Unit Owners, all as may be now or hereafter acquired, directly or indirectly, in such form and in such manner as may be deemed by the Board of Directors to be in the best interests of the Association. The annual budget shall be established, adopted, and amended in accordance with and pursuant to the Association's By-Laws and copies of said budget shall be delivered to each Unit Owner; provided, however, the delivery or non-delivery of a copy of said budget to each Owner shall not affect the liability of any Owner for payment of any assessment(s) thereunder. Should the Board of Directors at any time determine, in the sole discretion of said Board of Directors, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, said Board of Directors shall have the authority to levy such additional assessment or assessments as it may deem to be necessary.
- B. The Board of Directors of the Association, in establishing said annual budget for operation, management, and maintenance of the Condominium, may include therein

a sum to be collected and maintained as a reserve fund for replacement of common elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of common elements, as well as the replacement of personal property which may constitute a portion of same held for the joint use and benefit of all of the Owners of all Condominium Parcels. The amount to be allocated to such reserve fund for replacements shall be established by said Board of Directors so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacement of common elements.

- C. The Board of Directors of the Association, in establishing said annual budget for operation, management, and maintenance of the Condominium, may include therein a sum to be collected and maintained as a general operating reserve, which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by Unit Owners, as a result of emergencies or for other reasons, placing financial stress upon the Association.
- D. All monies collected by the Association shall be treated as separate property of the said Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration of Condominium and the Articles of Incorporation and By-Laws of said Association, and as monies for any assessment are paid to the Association by any Unit Owner, the same may be commingled with monies paid to said Association by other Unit Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom, or from the leasing or use of common elements, shall be held for the benefit of the members of the Association, no member of said Association shall have the right to assign, hypothecate, pledge, or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Parcel. When the Owner of a Condominium Parcel shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Parcel, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Unit Owner, as all monies which any Unit Owner has paid to the Association shall be and constitute an asset of said corporation which may be used in the operation and management of the Condominium.
- E. The owner or owners of each Condominium Parcel, regardless of how little is acquired, including a purchaser at a judicial sale, shall be personally liable, jointly and severally, as the case may be, to the Association for the payment of all assessments, regular or special, which may be levied by the Association while such party or parties are Owner or Owners of a Condominium Parcel

in the Condominium. In the event that any Owner or Owners are in default in payment of any assessment or installment thereof owned to the Association, such Owner or Owners of any Condominium Parcel shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

- F. No Owner of a Condominium Parcel may exempt himself from liability for any assessment levied against such Owner and his Condominium Parcel by waiver of the use or enjoyment of any of the common elements, or by abandonment of the Condominium Parcel, or in any other way.
- G. Recognizing that the necessity for providing proper operation and management of the Project entails the continuing payment of costs and expenses therefor, which results in benefit to all of the Owners of Condominium Parcels, and that the payment of such common expense represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of the Owner of each Condominium Parcel, the Association is hereby granted a lien upon each and every Condominium Parcel, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each Condominium Parcel, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon such Condominium Parcel. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida, and in any suit for the foreclosure of said lien, the Association shall be entitled to rental from the Owner of any Condominium Parcel from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said Condominium Parcel, without notice to the Owner of said Condominium Parcel. The rental required to be paid shall be equal to the rental charged on comparable types of condominium units in Bay County, Florida. The lien granted to the Association shall further secure such advances 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, and the Association shall further be entitled to interest at the rate of fifteen percent (15%) per annum on any such advances made for such purpose. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Parcel, or who may be given or acquire a mortgage, lien, or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Parcel expressly subject to such lien rights.

Notwithstanding anything to the contrary contained in the foregoing, no foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner

of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the Claim of Lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If, after diligent search and inquiry, the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided hereinbelow.

- H. The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid unto the Association on or before the due date for such payment.
- I. The lien granted unto the Association shall be effective from and after the time of recording in the Public Records of Bay County, Florida, a Claim of Lien stating the description of the Condominium Parcel encumbered thereby, the name of the record owner, the amount due, and the date when due, and the lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid, or until barred by Chapter 95, Florida Statutes (1977), as amended. Such Claim of Lien shall include only assessments which are due and payable when the Claim of Lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such Claim of Lien shall be signed and acknowledged by an officer or agent of the Association. Upon full payment of all sums secured by such Claim of Lien, the same shall be satisfied of record.
- J. By recording a notice in substantially the following form, a Unit Owner or his agent or attorney may require the Association to enforce a recorded Claim of Lien against his Condominium Parcel:

NOTICE OF CONTEST OF LIEN

TO: Horizon South Condominium Association, Inc.
 You are notified that the undersigned contests the Claim of Lien filed by you on _____, 19____, and recorded in Official Records Book _____ at Page _____, of the Public Records of Bay County, Florida ~~and that~~ the time within which you may file suit to enforce your lien is limited to ninety (90) days from the date of service of this notice.

Executed this _____ day of _____

Signed: (Owner or Attorney)

The Clerk of the Circuit Court shall mail a copy of the recorded Notice of Contest to the lien claimant at the address shown in the Claim of Lien or most recent amendment to it, shall certify to the service on the face of the Notice, and shall record the Notice.

Service is complete upon mailing. After service, the Association has ninety (90) days in which to file an action to enforce the lien, and if the action is not filed within the 90-day period, the lien is void.

- K. Whenever any Condominium Parcel is leased, sold or mortgaged by the Owner thereof, which lease, sale or mortgage shall be concluded only upon compliance with other provisions of this Declaration of Condominium, the Association, upon written request of the Owner of such Condominium Parcel, shall furnish to the proposed lessee, purchaser, or mortgagee a statement verifying the status of payment of any assessment which shall be due and payable to the Association by the Owner of such Condominium Parcel. Such statement shall be executed by any officer of the Association, and any lessee, purchaser, or mortgagee may rely upon such statement in concluding the proposed lease, purchase, or mortgage transaction, and the Association shall be bound by such statement.

In the event that a Condominium Parcel is to be leased, sold, or mortgaged at the time when payment of any assessment against the Owner of said Condominium Parcel and such Condominium Parcel due to the Association shall be in default (whether or not a Claim of Lien has been recorded by the Association), then the rent, proceeds of such purchase, or mortgage proceeds shall be applied by the lessee, purchaser, or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase, or mortgage proceeds to the Owner of any Condominium Parcel who is responsible for payment of such delinquent assessment.

The Association shall have the right to withhold consent to a sale, lease, or mortgage where there is a deficiency or delinquency existing as to an assessment or installment due in the absence of a properly executed assignment to the Association of such portion of the proceeds of such sale, lease, or mortgage equal to the amount of such deficiency or delinquency.

- L. In any voluntary conveyance of a Condominium Parcel, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses made up to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.
- M. Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sum then remaining owing to it.

14. Insurance.

- A. Liability Insurance. The Board of Directors of the Association shall obtain public liability and property damage insurance covering all of the common elements of the Condominium and insuring the Association and the common owners, as its and their interest appear, in such amounts as the Board of Directors of the Association may determine from time to time, provided that the minimum amount of coverage shall be \$100,000/\$300,000/\$10,000. Said insurance shall include, but not limit the same to, water damage, legal liability, hired automobile, non-owned automobile, and off-premises employee coverages. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner.

B. Casualty Insurance.

- (1) Purchase of Insurance: The Association shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance, and such Flood Insurance as is available and/or which is required by Institutional Mortgagees pursuant to Federal regulations, insuring all of the insurable improvements within the Condominium, including real and personal property owned by the Association, and fixtures, installations or additions comprising that part of the Condominium buildings within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the Units initially installed or replacements thereof, in accordance with the original plans and specifications, in and for the interest of the Association, all Unit Owners and their mortgagees, as their interests may appear, in a company acceptable to the standards set by the Board of Directors of the Association, in an amount equal to maximum insurable replacement value, as determined annually by the Board of Directors of the Association.

The company or companies with whom the Association shall place its insurance coverage, as provided in this Declaration, must be good and responsible companies, authorized to do business in the State of Florida. The Institutional Mortgagee owning and holding the first recorded mortgage encumbering a Condominium Unit shall have the right, for so long as it owns and holds any mortgage encumbering a Condominium Unit, to approve the policies and the company or companies who are the insurers under the insurance placed by the Association, as herein provided, and the amount thereof, and the further right to designate and appoint the Insurance Trustee. At such time as the aforesaid Institutional Mortgagee is not the holder of a mortgage on a unit, then these rights of approval and designation shall pass to the Institutional Mortgagee having the highest dollar indebtedness on Units in the Condominium, and in the absence of the action of said mortgagee, the Association shall have said right without qualification.

- (2) Loss Payable Provisions - Insurance Trustee: All policies purchased by the Association shall be for the benefit of the Association, all Unit Owners, and their mortgagees, as their interest may appear. Such policies shall be deposited with the Insurance Trustee (as hereinafter defined), who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

Said policies shall provide that all insurance proceeds payable on account of loss or damage shall be payable to a bank in Florida with trust powers, as may be approved by the Board of Directors of the Association, which bank is herein referred to as the "Insurance Trustee". The Insurance Trustee shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies, not for the failure to collect any insurance proceeds, nor for the form or content of the policies. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the Unit Owners and their respective mortgagees, (sometimes collectively referred to hereinafter as "Beneficial Owners"), in the following shares, but such shares need not be set forth upon the records of the Insurance Trustee:

- (a) Common elements: Proceeds on account of damage to common elements - an undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his Unit.
 - (b) Condominium Units: Proceeds on account of ~~undivided shares:~~
 - (i) Partial Destruction - when Units are to be repaired and restored - for the Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner.
 - (ii) Total Destruction of the Condominium Property or where "very substantial" damage occurs and the Condominium Property is not to be restored, as provided hereinafter in this Article - for the Owners of all Condominium Units, each Owner's share being in proportion to his share in the common elements appurtenant to his Condominium Unit.
 - (c) Mortgagees: In the event an institutional mortgage encumbers a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit 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.
- (3) Distribution of Proceeds: Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Beneficial

Owners and expended or disbursed after first paying or making provision for the payment of the expenses of the Insurance Trustee in the following manner:

- (a) Reconstruction or Repair: If the damage for which the proceeds were paid is to be repaired and restored, the remaining proceeds shall be paid to defray the cost thereof, as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the Beneficial Owners, all remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee. Said remittance shall be made solely to an Institutional Mortgagee when requested by such Institutional Mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt.
- (b) Failure to Reconstruct or Repair: If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be repaired and restored, the proceeds shall be disbursed to the Beneficial Owners; remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him. Said remittance shall be made solely to an Institutional Mortgagee when requested by such Institutional Mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of its mortgage debt. In the event of the loss or damage to personal property belonging to the Association, and should the Board of Directors of the Association determine not to replace such personal property as may be lost or damaged, the proceeds shall be disbursed to the Beneficial Owners as surplus in the manner elsewhere stated.
- (c) Certificate: In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association executed by the President and Secretary of the Association, as to the names of the Unit Owners and their respective shares of the distribution. Upon request of the Insurance Trustee, the Association forthwith shall deliver such certificate. In addition, the Insurance Trustee may rely on such a certificate as to whether or not the damaged property is to be repaired and restored and as to the payee and the amount to be paid from said proceeds.

- (4) Loss Within a Single Unit: If loss shall occur within a single Unit or Units, without damage to the common elements, the insurance proceeds shall be distributed to the Beneficial Unit Owner(s), remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee. Said remittance shall be made solely to an Institutional Mortgagee when requested by such Institutional Mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The Unit Owner shall thereupon be fully responsible for the restoration of the Unit.
- (5) Loss Less than "Very Substantial": Where loss or damage occurs to more than one Unit, or to the common elements, or to any Unit or Units and the common elements, but said loss is less than "very substantial" (as hereinafter defined), it shall be obligatory upon the Association and the Unit Owners to repair, restore, and rebuild the damage caused by said loss. Where such loss or damage is less than "very substantial":
- (a) The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repairing and restoration.
 - (b) If the damage or loss is limited to the common elements, with no, or minimal damage, or loss to any individual Unit, and if such damage or loss to the common elements is less than \$5,000.00, the insurance proceeds shall be endorsed by the Insurance Trustee over to the Association, and the Association shall promptly contract for the repair and restoration of the damage.
 - (c) If the damage or loss involves individual Units encumbered by Institutional Mortgages, as well as the common elements, or if the damage is limited to the common elements alone, but is in excess of \$5,000.00, the insurance proceeds shall be disbursed by the Insurance Trustee for the repair and restoration of the property upon the written direction and approval of the Association, and provided, however, that upon the request of an Institutional Mortgagee, the written approval shall also be required of the Institutional Mortgagee owning and holding the first recorded mortgage encumbering a Condominium Unit, so long as it owns and holds any mortgage encumbering a Condominium Unit. At such time as the aforesaid Institutional Mortgagee is not the holder of a mortgage on a Unit, then this right of approval and designation shall pass to the Institutional Mortgagee having the highest dollar indebtedness on Units in the Condominium. Should written approval be required, as aforesaid, it shall be said mortgagee's duty to give written notice thereof to the Insurance Trustee. The Insurance Trustee may rely upon the certificate of the Association and the aforesaid Institutional Mortgagee, if said Institutional Mortgagee's written approval is required, as to the payee and the amount to be paid from said proceeds. All payees shall deliver paid bills and waivers of mechanics' liens to the Insurance Trustee and execute any affidavit required by law or by the Association or the aforesaid Institutional Mortgagee. In addition to the foregoing, the Institutional Mortgagee whose approval may be required, as aforesaid, shall have the

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right to require the Association to obtain a completion, performance, and payment bond in an amount and with a bonding company authorized to do business in the State of Florida, which are acceptable to said mortgagee.

- (d) Subject to the foregoing, the Board of Directors shall have the right and obligation to negotiate and contract for the repair and restoration of the premises.
 - (e) If the net proceeds of the insurance are insufficient to pay for the estimated cost of restoration and repair (or for the actual cost thereof if the work has actually been done), the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Unit Owners in proportion to the Unit Owners' share in the common elements, for that portion of the deficiency as is attributable to the cost of restoration of the common elements, and against the individual Unit Owners for that portion of the deficiency as is attributable to his individual Unit; provided, however, that if the Board of Directors find that it cannot determine with reasonable certainty the portion of the deficiency attributable to specific, individually damaged, Unit(s), then the Board of Directors shall levy the assessment for the total deficiency against all of the Unit Owners in proportion to the Unit Owners' share in the common elements, just as though all of said damage had occurred in the common elements. The special assessment funds shall be delivered by the Association to the Insurance Trustee and added by said Trustee to the proceeds available for the repair and restoration of the premises.
 - (f) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient but additional funds are raised by special assessment within ninety (90) days after the casualty so that sufficient funds are on hand to fully pay for such restoration and repair, then no mortgagee shall have the right to require the application of insurance proceeds as to the payment of its loan, provided, however, that this provision shall be waived by the Board of Directors in favor of any Institutional Mortgagee upon request therefor, at any time. To the extent that any insurance proceeds are required to be paid over to such mortgagee, the Unit Owner shall be obliged to replenish the funds so paid over, and said Unit Owner and his unit shall be subject to special assessment for such sum.
- (6) "Very Substantial" Damage. As used in this Declaration, or any other context dealing with this Condominium, the term "very substantial" damage shall mean loss or damage whereby three-fourths (3/4) or more of the total unit space in the Condominium is rendered untenable, or loss or damage whereby seventy-five percent (75%) or more of the total amount of insurance coverage (placed as per Article 14.B.1) becomes payable. Should such "very substantial" damage occur, then:

- (a) The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof.
- (b) The provisions of Article 14.B.5(f) shall not be applicable to any Institutional Mortgagee who shall have the right, if its mortgage so provides, to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The Board of Directors shall ascertain as promptly as possible the net amount of insurance proceeds available for restoration and repair.
- (c) Thereupon, a membership meeting shall be called by the Board of Directors of the Association, to be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with respect to the abandonment of the Condominium, subject to the following:
 - (i) If the net insurance proceeds available for restoration and repair, together with the funds advanced by Unit Owners to replace insurance proceeds paid over to Institutional Mortgagees, are sufficient to cover the cost thereof, so that no special assessment is required, then the Condominium Property shall be restored and repaired, unless two-thirds (2/3) of the total votes of the members of the Condominium shall vote to abandon the Condominium, in which case the Condominium Property shall be removed from the provisions of the law, in accordance with Section 718.117 of the Condominium Act.
 - (ii) If the net insurance proceeds available for restoration and repair, together with funds advanced by Unit Owners to replace insurance proceeds paid over to Institutional Mortgagees, are not sufficient to cover the costs thereof, so that a special assessment will be required, then if a majority of the total votes of the members of the Condominium vote against such special assessment and to abandon the Condominium, then it shall be so abandoned and the Condominium Property removed from the provisions of the law, in accordance with Section 718.117 of the Condominium Act. In the event a majority of the total votes of the members of the Condominium vote in favor of the special assessment, the Association shall immediately levy such assessment, and thereupon the Association shall proceed to negotiate and contract for such repairs and restoration, subject to the provisions of Paragraph 14.B (5)(c) and (d) above. The special assessment funds shall be delivered by the Association to the Insurance Trustee and added by said Trustee to the proceeds available for the repair and restoration of the property. The proceeds shall be disbursed by the Insurance Trustee for the repair and restoration of the property, as provided in paragraph 14.B (5)(c) above. To the extent

that any insurance proceeds are paid over to Institutional Mortgagees, and in the event it is determined not to abandon the Condominium and to vote a special assessment, the Unit Owners shall be obliged to replenish the funds so paid over to his Institutional Mortgagee, and said Unit Owners and their Units shall be subject to special assessment for such sum.

- (d) In the event any dispute shall arise as to whether or not "very substantial" damage has occurred, it is agreed that such a finding made by the Board of Directors of the Association shall be binding upon all Unit Owners.
 - (7) Surplus. It shall be presumed that the first monies disbursed in payment of costs of repair and restoration shall be from the insurance proceeds; and if there is a balance in the funds held by the Insurance Trustee after the payment of all costs of the repair and restoration, such balance may be retained as a reserve, or wholly or partly distributed, at the discretion of the Board of Directors, unless the Institutional Mortgagee holding and owning the first recorded mortgage encumbering a Condominium Unit within the Condominium requires distribution. In the event of distribution, then the Insurance Trustee shall distribute any such balance to the Beneficial Owners of the fund in the manner elsewhere stated.
 - (8) Certificate: The Insurance Trustee may rely upon a certificate of the Association, certifying as to whether or not the damaged property is to be repaired and restored. Upon request of the Insurance Trustee, the Association forthwith shall deliver such certificate.
 - (9) Plans and Specifications: Any repair and restoration must be substantially in accordance with the plans and specifications for the original buildings, or as the buildings were last constructed, or according to the plans approved by the Board of Directors of the Association, which approval shall not be unreasonably withheld. If any material or substantial change is contemplated, the approval of all Institutional Mortgagees shall also be required. The Insurance Trustee is not obligated or required to inquire into or determine any matters concerning the plans or specifications of any repairs, restorations, or rebuilding.
 - (10) Association's Power to Compromise Claim: The Association is hereby irrevocably appointed agent for each Unit Owner for the purpose of compromising and settling claims arising under insurance policies purchased by the Association, and to execute and deliver releases therefor, upon the payment of claims.
- C. A workmen's compensation policy shall be purchased to meet the requirements of law.
- D. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable shall be obtained by the Association.

- E. Each individual Unit Owner shall be responsible for purchasing at his own expense, liability insurance to cover accidents occurring within his own Unit, and for purchasing insurance upon his own personal property, and living expense insurance, and such insurance, where applicable, shall contain the same waiver of subrogation, if available, as referred to in Paragraph F hereinafter.
- F. If available, and where applicable, the Board of Directors of the Association shall endeavor to obtain policies which provide that the insurance company waive its right of subrogation as to any claims against the Unit Owners, the Association, and their respective servants, agents, and guests.
- G. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend, as permitted by law.
- H. A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.
- I. Premiums for the payment of all Insurance which the Association shall obtain pursuant to the provisions of this Paragraph 14 shall be paid by the Association and charged as a common expense.

15. Obligations of Members. In addition to other obligations and duties heretofore set out in this Declaration, every Condominium Parcel Owner shall:

- A. Not use or permit the use of his Unit for any purpose other than as a family residence and maintain his Unit in a clean and sanitary manner.
- B. Not keep pets or other animals in his Unit or within the common elements unless prior written approval of the Board of Directors of the Association is obtained. It is the intent of the Declarant and the Association that said written approval will not be withheld for small dogs and cats. In the event written approval as aforescribed is obtained by the Unit Owner, then and in such an event the Unit Owner will be required to be sure that the animal is always kept under a leash or within a cage. In no event shall the animal be a nuisance or disturbance of any kind or nature. In the event written approval as aforescribed is obtained, then and in such an event such approval will be subject to Rules and Regulations established from time to time by the Association.
- C. Not permit or suffer anything to be done or kept in his Unit which will increase the insurance rates on his Unit or the common elements or which will obstruct or interfere with the rights of other members or annoy them by unreasonable noises or otherwise; nor shall a member commit or permit any nuisance, immoral or illegal act in his Unit or on the common elements.
- D. Conform to and abide by the By-Laws and uniform Rules and Regulations in regard to the use of the Unit and common

elements which may be adopted in writing from time to time by the Board of Directors of the Association, and to see that all persons using Owner's property by, through, or under him, do likewise.

- E. Allow the Board of Directors and or the agents and employees of the Association to enter any Unit for the purpose of maintenance, inspection, repair, or replacement of improvements within Units or the common elements, or in case of emergency threatening Units or the common elements, or to determine compliance with these restrictions, reservations, covenants, conditions and easements and the By-Laws of the Association.
- F. Signs - No "Sold" or "For Sale" or "For Rent" signs or other displays or advertising shall be maintained or permitted on any part of the common elements, recreational facilities or Units. The right is reserved to the Declarant to place "Sold" or "For Sale" or "For Rent" signs in connection with any unsold or sold or unoccupied Units it may from time to time own. The same right is reserved to any Institutional Mortgagee which may become the Owner of a Unit and to the Association as to any Unit which it may own.
- G. Not make or cause any structural alterations to and in any of the buildings, including, but not limited to, enclosing or screening of a terrace, balcony, or sundeck of any Unit, or removal of any additions or improvements or fixtures from any of the buildings, or do any act that will impair the structural soundness of any of the buildings, without first obtaining the prior written consent of the Declarant or the Association.
- H. Make no repairs to any plumbing or electrical wiring or air-conditioning and heating systems except by personnel authorized to do such work by the Board of Directors of the Association. Plumbing and electrical repairs within a Unit shall be paid for and be the financial obligation of the Owners of the Unit, whereas the Association shall pay for and be responsible for repairs and electrical wiring within the common elements. All repairs, maintenance and replacement of air-conditioning and heating systems regardless of location shall be the responsibility of the Unit Owner involved in such repair or replacement.
- I. Not cause to be constructed or built any additional air-conditioning or fan equipment attached to walls, windows, or doors or displayed in such a manner as to be seen from the outside of any of the buildings.
- J. Not permit to be constructed or built any additional windows, walls, doors, terraces, balconies, sun decks, or walkways, on or to his Unit without first obtaining the prior written consent of the Declarant or the Association.
- K. Provided, however, that until the Declarant has completed and sold all the Units of the Condominium, neither the Unit Owners nor the Association nor their use of the Condominium shall interfere with the completion of the Condominium and the sale of the Units. The Declarant (or its duly authorized agents, or assigns) may make such uses of the unsold Units, the common areas and the Recreational Property as may facilitate such completion and sale, including but not limited to, the maintenance of sales offices for the showing of the property and display of signs, billboards, placards and visual promotional materials. The Declarant may use unsold Units as model units or as sales offices for display purposes to prospective condominium purchasers. The Declarant

shall have the right to use unassigned parking spaces and guest parking spaces for prospective purchasers and such other parties as Declarant determines.

16. Conveyances, Sales, Rentals, Leases and Transfers. In an effort to provide a community of congenial residents and thus protect the value of the Units, the sale, leasing, rental and transfer of Units by any Owner, other than the Declarant, shall be subject to the following provisions:

- A. Conveyances, Sales and Transfers: Prior to the sale, conveyance or transfer of any Condominium Parcel to any person other than transferor's spouse, the Owner shall notify the Board of Directors of the Association, in writing, of the name and address of the person to whom the proposed sale, conveyance, or transfer is to be made, and such other information as may be required by the Board of Directors of the Association. Within fifteen (15) days, the Board of Directors of the Association shall either approve or disapprove of a proposed sale, transfer, or conveyance, in writing, and shall notify the Owner of its decision. In the event the Board of Directors shall fail to approve or disapprove of a proposed sale, within said fifteen (15) days, the failure to act as aforesaid shall be considered approval of the sale.

In the event the Board of Directors disapproves the proposed sale, conveyance, or transfer, and if a member still desires to consummate such sale, conveyance, or transfer, he shall thirty (30) days before such sale, conveyance or transfer, give written notice to the secretary of the Association of his intention to sell, convey or transfer on a certain date, together with the price and other terms thereof, and the Association shall promptly notify the members of the Association of the date, price and terms. Any member shall have the first right over the prospective purchaser to accept such sale or transfer at the price and on the terms contained in the notice, provided that they so notify the secretary of the Association, in writing, of the acceptance at least fifteen (15) days before the date of the intended sale or transfer, and deposit with the secretary of the Association ten percent (10%) of the purchase price as a good faith deposit, which information and notice of deposit the Association shall promptly forward to the Owner. In the event no members of the Association accept first right of purchase as aforescribed, then the Association must either approve the transaction or furnish a purchaser approved by the Association who will accept the transaction upon the price and upon the terms contained in the notice, provided the Association, at least ten (10) days before the date of the intended sale or transfer, notifies the Owner that a purchaser has been furnished and that said purchaser has deposited ten percent (10%) of the purchase price with the Association as a good faith deposit for the intended sale. In the event the member giving notice receives acceptance from more than one (1) member, it shall be discretionary with the member giving notice to consummate the sale or transfer with whichever of the accepting members he chooses.

In the event the member giving notice received no written notice from any member of the Association accepting his price and terms of the proposed sale or transfer on or before ten (10) days before the date given in the notice as the day of sale or transfer, then that member may complete the sale or transfer, on the day and at the price and terms given in his notice, but on no other day or at no other price or terms without repeating the procedure outlined above. In the event the member makes

a sale or transfer without first complying with the terms hereof, any other member shall have the right to redeem from the purchaser, according to the provisions hereof. The member's redemption rights shall be exercised by the member reimbursing the purchaser for the monies expended, and immediately after such reimbursement said purchaser or transferee shall convey all his right, title and interest to the member or members making the redemption.

An affidavit of the secretary of the Association stating that the Board of Directors approved in all respects on a certain date the sale or transfer of a Condominium Parcel to certain persons shall be conclusive evidence of such fact, and from the date of approval as stated in the affidavit the redemption rights herein afforded the members shall terminate.

An affidavit of the secretary of the Association stating that the Board of Directors was given proper notice on a certain date of a proposed sale or transfer and that the Board of Directors disapproved or failed to act on such proposed sale or transfer, and that thereafter all the provisions hereof which constitute conditions precedent to a subsequent sale or transfer of a Condominium Parcel have been complied with, and that the sale or transfer of a particular Condominium Parcel to particularly named persons does not violate the provisions hereof, shall be conclusive evidence of such facts for the purpose of determining the status of the person's title to such Condominium Parcel sold or transferred. Such affidavit shall not be evidence of the fact that the subsequent sale or transfer to such person(s) was made at the price, terms, and date stated in the notice given to the secretary, but one hundred twenty (120) days after the date of the notice to the Board of Directors as stated in the affidavit the redemption rights herein afforded the members shall terminate.

- B. Rental or Lease: A Condominium Parcel shall not be leased or rented without the prior written approval of the Association. The Board of Directors shall have the right to require that a substantially uniform form of lease be used.

In the event the Board of Directors approves a rental or lease, such approval of a lease or rental shall not release the member from any obligation under this Declaration, and either the lessee or the member shall have the right to use the Recreational Facilities to the exclusion of the party not using same.

Completely apart from and in addition to the Association's right to pass on and approve or disapprove of any such attempted lease on any Condominium Unit, is the right of the Association hereby given and granted of first refusal to lease any Condominium Unit offered for lease by any member of the Association. Accordingly, no Owner of a Condominium Unit shall lease same to any party without first giving the Association notice in writing of such lease as herein provided, thereby giving the Association the opportunity to determine whether it will exercise the right of first refusal to lease said Condominium Unit on the same terms and conditions as those contained in any bona fide offer which the Owner of such Condominium Unit may have received for the lease of his said Condominium Unit. If the Association

is desirous of exercising its option to lease said Condominium Unit on the same terms and conditions as are contained in said bona fide offer, then the Association shall notify the Owner of said Condominium Unit desiring to lease the same of the exercise by the Association of its election to so lease said Condominium Unit, such notice to be in writing, and sent by certified mail to said owner within fifteen (15) days from receipt by the Association of the Owner's notice to said Association as hereinabove required. If the Association has elected to lease such Condominium Unit, then upon notifying the Owner of such Condominium Unit of its election to lease said Condominium Unit, the Association shall execute a lease and shall consummate said lease, all on the same terms and conditions as those contained in said bona fide offer. If the Association does not, within fifteen (15) days after notice to it from the Owner, exercise its right of first refusal herein granted, the Owner may lease the Condominium Unit to the proposed lessee, provided that the Association has approved of the lessee as hereinabove stated. If the Board of Directors of the Association shall so elect, it may cause its right of first refusal to lease any Condominium Unit to be exercised in its name for itself or for a party approved by said Board of Directors.

- C. If the purchaser or lessee is a corporation, the approval may be conditioned upon the approval by the Association of all occupants of the Condominium Parcel.
- D. In the case of the death of the Owner of a Condominium Parcel, the surviving spouse, if any, and if no surviving spouse, the other member or members of such Owner's family residing with the Owner at the time of his death, may continue to occupy the said Condominium Parcel; and if such surviving spouse or other member or members of the decedent owner's family shall have succeeded to the ownership of the Condominium Parcel, the ownership thereof shall be transferred by legal process to such new Owner. In the event said decedent shall have conveyed or bequeathed the ownership of his Condominium Parcel to some designated person or persons other than the surviving spouse or members of his family, as aforescribed, or if some other person is designated by such decedent's legal representative to receive the ownership of the Condominium Parcel, or under the laws of descent and distribution of the State of Florida the Condominium Parcel descends to some person or persons other than his surviving spouse or members of his family as aforescribed, the Board of Directors of the Association shall, within thirty (30) days of proper evidence or rightful designation served upon the president or any other officer of the Association; or within thirty (30) days from the date the Association is placed on actual notice of the said devisee or descendant, express its refusal or acceptance of the individual or individuals so designated as owners of the Condominium Parcel. If the Board of Directors of the Association shall consent, ownership of the Condominium Parcel may be transferred to the person or persons so designated, who shall thereupon become the Owner of the Condominium Parcel, subject to the provisions of this enabling Declaration and the Articles of Incorporation and By-Laws of the Association. If, however, the Board of Directors of the Association shall refuse to consent, then the members of the Association shall be given an opportunity during thirty (30) days next after said last above mentioned thirty (30) days to purchase or to furnish a purchaser, for cash, the said Condominium Parcel at the then fair market value thereof. Should the parties fail to agree on the value of such Condominium Parcel, the same shall be determined by an appraiser appointed by the Senior Judge of the Circuit Court in and for Bay County, Florida,

upon ten (10) days' notice, on petition of any party in interest. The expense of appraisal shall be charged to and paid by the Association. In the event the then members of the Association do not exercise the privilege of purchasing or furnishing a purchaser of said Condominium Parcel within such period, and upon such terms, the person or persons so designated may then, and only in such event, take title to the Condominium Parcel; or such person or persons or the legal representative of the deceased Owner may sell the said Condominium Parcel, but such sale shall be subject in all other respects to the provisions of this enabling Declaration and the By-Laws of the Association.

- E. No Owner may mortgage his Condominium Parcel or any interest therein without the approval of the Association, except to an Institutional Mortgagee. The approval of any other mortgage may be upon conditions determined by the Association or may be arbitrarily withheld.
- F. Any sale, mortgage, or lease not authorized pursuant to the terms of the Declaration shall be void unless subsequently approved by the Association.
- G. There shall be deposited and delivered to the Association, simultaneously with the giving of notice of intention to sell or lease, or of transfer, gift, devise or inheritance, a credit reporting fee in the amount of Fifty Dollars (\$50.00), or such greater fee as may be provided by the Florida Condominium Act, as amended from time to time. It is understood that no fee shall be charged in connection with a transfer or approval in excess of the expenditures reasonably required for same. No charges shall be made in connection with an extension or renewal of a lease.
- H. The foregoing provisions of this paragraph 16 shall not apply to a transfer by a Unit Owner to his or her spouse or (if a unit is owned by a form of co-tenancy) to transfer from one co-tenant to the other co-tenant(s).
- I. The Board of Directors of the Association shall have the right to withhold consent and approval of prospective unit owners or lessees, to any lease, sale, transfer, conveyance, bequest, devise, or otherwise in the event those prospective unit owners or lessees by being such a unit owner or lessee would automatically violate or breach a term, condition, restriction, rule or regulation, or covenant under this Declaration or Exhibits hereto.
- J. The foregoing provisions of this Paragraph 16 shall not apply to a transfer to or purchase by any Institutional Mortgagee that acquires its title as a result of owning a lien or mortgage upon the unit 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 provision apply to a transfer, sale or lease by any Institutional Mortgagee that so acquires its title; nor shall such provisions apply to a transfer, sale, or lease by a "bulk grantee" of an Institutional Mortgagee that so acquires its title as a result of owning a mortgage upon the unit concerned. A "bulk grantee" is defined as a grantee acquiring three or more units from said Institutional Mortgagee. The assignee of a mortgage originally taken by an Institutional Mortgagee shall enjoy the same rights, immunities, and privileges as are herein granted to said Institutional Mortgagee. Neither shall such provisions require the approval of a purchaser who acquires the title to a Unit 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. Neither shall such provisions apply to the Declarant, or any person who is an officer, stockholder or Director of the Declarant, and any such person or corporation shall have the right to freely sell, lease, transfer or otherwise deal with the title and possession of a Unit without complying with the provisions of this paragraph 16, and without the approval of the Association, and without payment of any credit reporting fee.

- K. Notwithstanding anything herein to the contrary, the Declarant shall have the right of first refusal to purchase any unit which the Association or its members shall have the right to purchase upon the same price and at the same terms available to the Association or members; such right of first refusal to continue until such time as the Declarant shall have completed, sold and closed on the sale of all units in the Condominium or until three (3) years after the recordation of this Declaration, whichever shall first occur.

17. Restraint upon Se aration and Partition. Any transfer of a Condomin um Parce must inc u e a e ements thereof as afore-described and appurtenances thereto whether or not specifically described, including, but not limited to, the Condominium Parcel owner's share in the common elements, the unit, and his Association membership. Recognizing that the proper use of a Condominium Parcel by any Owner or Owners is dependent upon the use and enjoyment of the common elements in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners of Condominium Parcels that the ownership of the common elements be retained in common by the Owners of Condominium Parcels in the Condominium, it is declared that the percentage of the undivided interest in the common elements appurtenant to each Condominium Parcel shall remain undivided and no Unit Owner shall bring any action for partition or division.

18. Declarant's Tenants. It is understood and agreed by all parties hereto and all Unit Owners that certain units may be occupied by tenants of the Declarant under lease agreements heretofore or hereafter consummated and agreed upon. Any such tenants of Declarant shall have the full right and authority to continue to occupy said premises in accordance with their lease agreements and to use and enjoy on a nonexclusive basis all common elements of the Condominium and the Recreational Facilities without any cost or expense, except as may be provided under their lease agreement with the Declarant.

19. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto, and said documents and rules 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 attorneys' fees as may be awarded by the court, provided no attorneys' fees may be recovered against the Association or the Declarant in such action.

In addition to the foregoing, if a Unit Owner fails to comply with the terms of this Declaration, the By-Laws, and/or the rules and regulations adopted pursuant thereto, as they may be amended from time to time, and as a result of such failure it becomes necessary for either the Association or its agent to employ an attorney in order to insure that the Unit Owner complies with his said obligation, then and in such event the Unit Owner will be obligated to reimburse the Association for the costs of such attorneys' fees, regardless of whether or not suit may be instituted.

20. No Waiver of Rights. The failure of the Declarant, or the Association, or any Unit Owner to enforce any covenant, restriction, or other provision of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the By-Laws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

21. Assignability of Rights of Declarant. The rights and privileges reserved in this Declaration of Condominium and the exhibits hereto in favor of the Declarant are freely assignable, in whole or in part, by the Declarant to any party who may be hereafter designated by the Declarant to have and exercise such rights, and such rights may be exercised by the nominee, assignee or designee of the Declarant and/or exercised by the successor or successors in interest of the Declarant and/or the successor or successors in interest of the nominees, assignees or designees of the nominees, assignees or designees of the Declarant.

22. Type of Ownership. Ownership of a residential Condominium Parcel shall be by special warranty deed from the Declarant conveying fee simple title to each Condominium Unit and the undivided share in all other improvements appurtenant to such Unit. There shall be included in each Unit the undivided share in the common elements as afordescribed.

23. Amendments. Except as otherwise provided in this Declaration, the By-Laws, and Articles of the Association, this Declaration of Condominium and the Articles and By-Laws of the Association 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 is to be considered.
- B. A resolution for the adoption of a proposed amendment may be proposed by either a majority of the Board of Directors of the Association or by not less than one-third (1/3) of 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 otherwise provided, in this Declaration, the By-Laws and Articles of Incorporation of the Association, such approvals must be either by:
 - (1) Not less than sixty-six and two-thirds percent (66-2/3%) of the entire membership of the Board of Directors and by not less than fifty-one percent (51%) of the votes of the entire membership of the Association, or
 - (2) Not less than seventy-five percent (75%) of the votes of the entire membership of the Association, or
 - (3) In the alternative, an amendment may be made by an agreement signed and acknowledged by all Unit Owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Bay County, Florida.

Proviso Provided however:

- (4) That no amendment shall be made or be valid which shall in any manner impair the security of any Institutional Mortgagee having a mortgage or other lien against any Condominium Parcel.

- (5) That no amendment shall be made increasing or decreasing a Unit Owners's percentage of ownership in the common elements as hereinabove stated, nor which would materially alter or modify the appurtenances to a Condominium Unit, or materially change the configuration of the perimetrical boundaries thereof, or change the proportion of the percentage by which the Owner of a Condominium Parcel shares the common expenses and/or owns the common surplus unless the Unit Owner or Unit Owners so affected and all record owners of liens shall join in the execution of the amendment; provided, however, nothing contained within this Declaration shall be construed as a limitation on the Declarant's right to adjust and alter any interior walls or partitions of a Unit or other interior configuration of a Unit which do not materially affect the size of the Unit or the configuration of the perimetrical boundaries of said Unit.
- (6) No provisions of paragraph 14 of this Declaration may be changed without the written consent and approval of ninety percent (90%) of all Institutional Mortgagees of record of this Condominium.
- (7) No amendment shall be made or be valid so long as the Declarant is the Owner of any Unit within the Condominium unless the approval of the Declarant is expressly noted thereon in writing except that this clause (7) shall not be applicable with respect to amendments not detrimental to the sale of Units by the Declarant.
- (8) No amendment shall be made or be valid which would in any way affect the liability or duties of the Association or Declarant under the Recreation Agreement and Easement Agreement unless the approval of Declarant is expressly noted thereon in writing.
- (9) No provisions of paragraph 8(a) of this Declaration may be changed, altered or modified without the written consent and approval of all Unit Owners and their mortgagees.
- (10) Notwithstanding anything to the contrary contained in this Declaration, the Declarant expressly reserves the right to amend the Declaration so as to correct any legal description contained herein, which legal description or descriptions may have been incorrect by reason of a scrivener's or surveyor's error. The Declarant may amend this Declaration as aforescribed by filing an amended legal description (or descriptions) as an amendment to the Declaration among the Public Records of Bay County, Florida, which amendment (or amendments) shall expressly describe that legal description which is being corrected (by reference to the exhibit containing said legal description or otherwise), in addition to the corrected legal description. Such amendments need be executed and acknowledged only by the Declarant and need not be approved by the Association, Unit Owners, lienors, or mortgagees of Units of the Condominium whether or not elsewhere required for amendments. However, as part and parcel of any such amendment as provided for in this sub-paragraph, there shall be attached thereto an affidavit of the individual or individuals responsible for the original incorrect legal description, whether he be scrivener or surveyor,

which affidavit shall set forth (1) that said individual made an error in the legal description, (2) that the error is corrected by the description contained in the amendment, and (3) that it was the intent at the time of the incorrect legal description to make that description such as is contained in the new amendment. In the event the party responsible for the original incorrect legal description has died, then in that event, any other party having personal knowledge of the incorrect legal description by reason of the scrivener's or surveyor's error may execute the required affidavit for the amendment provided for herein.

- (11) Notwithstanding anything to the contrary contained in this Declaration, in the event because of scrivener's error, all of the common expenses or interest in the common surplus or all of the common elements in the Condominium have not been distributed in this Declaration so that the sum total of the shares of common elements and/or common expenses and/or of common surplus, as distributed herein, fail to equal one hundred percent (100%) whether said sum total is more than or less than one hundred percent (100%), then such error may be corrected by the filing of an Amendment to the Declaration executed by the Association and the Owners of the Units and owners of liens thereon for which modifications in the shares of common elements and/or common expenses and/or common surplus are being made. No other Unit Owners shall be required to join in or execute such an amendment. The Association's approval of the execution of said amendment shall be determined by a vote of not less than Sixty-six and two-thirds percent (66-2/3%) of the entire membership of the Board of Directors.
- (12) Notwithstanding anything to the contrary contained in this Declaration, provided the property rights of Unit Owners are not materially adversely affected, a defect, omission, or error in this Declaration of Condominium or in the Articles of Incorporation, By-Laws, or such other documentation required by law to establish the condominium form of ownership may be corrected by an amendment to the Declaration of Condominium or such other documentation as may be required by law, by the approval and execution of such amendment by the Association. The approval and adoption of such an amendment for the curing of defects, errors or omissions as aforesaid may be made by a vote of Sixty-six and two thirds percent (66-2/3%) of the entire membership of the Board of Directors of the Association in lieu of, but not in limitation of the use of, the aforescribed methods of amendment in this paragraph 23.
- C. A copy of each amendment shall be certified by the president or vice-president and secretary or assistant secretary or treasurer of the Association as having been duly adopted and shall be effective when recorded in the Public Records of Bay County, Florida.
- D. Amendments to the Declaration or other condominium documentation for the enlargement of common elements as may be permitted by Florida Statutes shall be approved and executed in accordance with the provisions of this paragraph 23.

24. Termination. This Condominium may be voluntarily terminated in the manner provided for in Section 718.117, Florida Statutes, at any time. In addition thereto, when there has been "very substantial" damage, as defined in Article 14.B (6) hereof, this Condominium shall be subject to termination, as provided in said Article 14.B(6). In addition thereto, if the proposed voluntary termination is submitted to a meeting of the members of the Association, pursuant to notice, and is approved in writing within sixty (60) days of the said meeting by seventy-five percent (75%) of the total vote of the members of the Association, and all Institutional Mortgagees, then the Association shall have an option to purchase all of the Units of the other non-consentive Owners within a period expiring one hundred-twenty (120) days 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 exercised upon the following terms:

- A. Exercise of Option: An agreement to purchase, executed by the Association and/or the record Owners of the Condominium Parcels who will participate in the purchase shall be delivered, by person delivery, or mailed by certified mail or registered mail to each of the record Owners of the Condominium Parcels to be purchased, and such delivery shall be deemed the exercise of the option. The agreement shall indicate which Units will be purchased by each participating owner and/or the Association, and shall require the purchase of all Units owned by Owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.
- B. Price: The sale price for each Unit shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by appraisers appointed by the Senior Judge of the Circuit Court in and for Bay County, Florida, on the petition of the seller. The expenses of appraisal shall be paid by the purchaser.
- C. Payment: The purchase price shall be paid in cash.
- D. Closing: The sale shall be closed within sixty (60) days following the determination of the sale price.

25. Apartment Unit Boundaries. Each Unit shall include that part of the building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

- A. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:
 - (1) Upper Boundaries: The horizontal plane of the undecorated finished ceiling.
 - (2) Lower Boundaries: The horizontal plane of the undecorated finished floor.
- B. The perimetrical boundaries of the Unit shall be the vertical planes of the undecorated finished interior of the walls bounding the Unit extending to intersections with each other and with the upper and lower boundaries, and where there is attached to the Unit a carport, the perimetrical boundaries shall be extended to include the carport.

26. Rights Reserved unto Institutional Mortgagees. So long as any Institutional Mortgagee or Institutional Mortgagees shall hold any mortgage upon any Condominium Parcel or Condominium Parcels, or shall be the owner of any Condominium Parcel or Condominium Parcels, such Institutional Mortgagee or Institutional Mortgagees shall have the following rights, to-wit:

- A. To be furnished with at least one copy of the annual financial statement and report of the Association, prepared by a certified public accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such financial statement and report to be furnished within ninety (90) days following the end of each calendar year.
- B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Condominium, or the Articles of Incorporation and By-Laws of the Association, which notice shall state the nature of the amendment being proposed.
- C. To be given notice of default by any member owning any Condominium Parcel encumbered by a mortgage held by any Institutional Mortgagee or Institutional Mortgagees, such notice to be given in writing and to be sent to the principal office of such Institutional Mortgagee or Institutional Mortgagees, or to the place which it or they may designate in writing to the Association.
- D. To cause the Association to create and maintain an escrow account for the purpose of assuring the availability of funds with which to pay premium or premiums due from time to time on insurance policy or policies which the Association is required to keep in existence, it being understood that the Association shall deposit in an escrow depository satisfactory to each Institutional Mortgagee or Institutional Mortgagees a monthly sum equal to one-twelfth (1/12) of the annual amount of such insurance expense, and to contribute such other sum as may be required therefor to the end that there shall be on deposit in said escrow account at least one month prior to the due date for payment of such premium or premiums a sum which will be sufficient to make full payment therefor. The Insurance Trustee designated by the Association shall be the escrow depository for purposes hereof, or the Board of Directors of the Association may designate any Institutional Mortgagee interested in the Condominium to act in such capacity.
- E. Whenever any Institutional Mortgagee or Institutional Mortgagees desire the provisions of this Article to be applicable unto them, they shall serve written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein with a copy by registered or certified mail addressed to the Institutional Mortgagee owning and holding the first recorded mortgage encumbering a Condominium Unit, which written notices shall identify the Condominium Parcel or Condominium Parcels upon which any such Institutional Mortgagees or Institutional Mortgagees hold any mortgage or mortgages, or identifying any Condominium Parcel owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Mortgagee or Institutional Mortgagees.

- F. Premiums for insurance required to be placed by the Association shall be a common expense and shall be paid by the Association. Should the Association fail to pay such premiums when due, or should the Association fail to comply with other insurance requirements imposed by the Institutional Mortgagee owning and holding the first recorded mortgage encumbering a Condominium Parcel, then said Institutional Mortgagee shall have the right at its option to order and advance such sums as are required to maintain or procure such insurance, and to the extent of the monies so advanced, plus interest thereon at the highest legal rate, said mortgagee shall be subrogated to the assessment and lien rights of the Association as against individual Unit Owners for the payment of such items of common expense.
- G. If two (2) or more Institutional Mortgagees hold any mortgage or mortgages upon any Condominium Parcel or Condominium Parcels, and/or shall be the Owner of any Condominium Parcel or Condominium Parcels, the exercise of the rights above described or manner of exercising said rights shall vest in the Institutional Mortgagee owning and holding the first recorded mortgage encumbering a Condominium Parcel, and the decision of such Institutional Mortgagee shall be controlling.
- H. In the event of a default under the Recreation Agreement, any Institutional Mortgagee shall have the right to advance to the Association (or to the Recreational Facilities Owner or his mortgagee as the situation may require) any and all sums as may be required to cure said default, whereupon the Institutional Mortgagee advancing said funds shall be subrogated to the rights of the party receiving such payment to the extent thereof.

27. Covenant Running With the Land. All provisions of this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Condominium Property and with every part thereof and interest therein, and all of the provisions thereof shall be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and the Articles of Incorporation, By-Laws and Rules and Regulations, as they may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into of occupancy of any Unit, shall constitute an agreement that the provisions of this Declaration, the Articles, By-Laws and Rules and Regulations of the Association, are adopted and ratified by such Unit Owners, tenant or occupant.

28. Restrictions and Easements. The real property submitted to condominium ownership herewith is subject to conditions, limitations, dedications, restrictions, reservations of record, taxes, applicable zoning ordinances now existing or which may hereafter exist, and any right of the United States of America, State of Florida, or any governmental agency as to any submerged lands and as to any lands lying below the natural, ordinary high water line of the surrounding bodies of water, easements for ingress and egress for pedestrian and vehicular purposes, easements for utility service, for the United States Post Office authorities, easements for utility service and drainage now existing or hereafter granted by the Declarant for the benefit of such persons as the Declarant designates, and the

said Declarant shall have the right to grant such easements and designate the beneficiaries thereof for such time as it determines in its sole discretion; and thereafter the Association shall be empowered to grant such easements on behalf of its members. During the period of time that the Declarant has the right to grant the foregoing easements, the consent and approval of the Association and its members shall not be required. The right to grant the foregoing easements shall be subject to said easement not structurally weakening the building improvements upon the Condominium Property nor unreasonably interfering with the enjoyment of the Condominium Property by the Association's members.

It is understood that certain portions of the lands may, from time to time, be set aside and designated for use as an interior private road system, pedestrian walkways, automobile parking areas and landscaped areas for the common use and benefit of all Unit Owners or tenants or other parties in the Condominium. It is the intention of this Declaration that the portions of the common elements of this Condominium which must be utilized for the above described purposes of this paragraph 28 be subject to the various easements created by this Declaration and all exhibits attached hereto and that the general reservation herein of said easements would fulfill said intent. However, if the intended creation of any or all of the aforesaid easements should fail by reason of the fact that as at the date hereof there is no grantee in being who has the capacity to take and hold the said easements by virtue of the reservation and grants of easements attempted to be made herein, then and in such event, any easement, license or right of way, not deemed to be created as aforescribed shall be considered as having been granted directly to the Association for the purpose of allowing the original party to whom the easement or license or right of way was originally granted the benefit of said easement or license or right of way.

Any easement, whether heretofore or hereafter created under and pursuant to this Declaration of Condominium, shall constitute a covenant running with the land of the Condominium, and notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use and purpose and shall survive the termination of the Condominium. The Unit Owners of this Condominium do hereby designate the Declarant and/or the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purposes of creating all such easements as are contemplated by the provisions hereof.

29. Invalidation and Operation. 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, the exhibits annexed hereto, or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof. Invalidation of any portion of any provision contained in a conveyance of a Condominium Parcel, whether by judgment, court order, or statute, shall in no-wise affect any of the other provisions, or the provisions of this Declaration, all of which shall remain in full force and effect.

In the event that any court shall hereafter determine that any provision as originally drafted herein violates the rule against perpetuities or any other rules of law because of the duration of the period involved, the period specified in the Declaration shall not thereby become invalid but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose measuring lives shall be those of the incorporators of the association.

30. Approval and Ratification. The Condominium Association, by its execution of this Declaration of Condominium, approves and ratifies all of the covenants, terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto. The Condominium Unit Owners, by virtue of their acceptance of the deed of conveyance as to their Condominium Parcel, and other parties by virtue of their occupancy of units, hereby approve and ratify all of the terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto.

31. Reservation of Exclusive Right to Install, Provide and Maintain Pay Television in the Condominium Project and Recreational Facilities. Declarant anticipates that certain systems may be developed, including but not limited to, Community Antenna Television, which will permit the transmission of a pay television picture to the Condominium Units of this Condominium. The Condominium Association and each Unit Owner in this Condominium do hereby give and grant unto the Declarant and the Declarant does hereby reserve unto itself for a thirty-five (35) year term, commencing with the date hereof, the exclusive right and privilege to install, provide and maintain any or all present or future systems which are or may be developed for the purpose of transmitting a pay television picture into the Condominium Units of this Condominium which desire such service and into the improvements of the recreational areas. Declarant does further reserve such easements over, under, across and through the Condominium Property and for cables and other equipment as may be reasonably necessary to provide the transmission of a pay television picture to the Condominium and recreational areas. Declarant further reserves the unrestricted right to assign, transfer, and convey the exclusive right, privilege and easement herein reserved. For the term of this reservation, the Condominium Association charged with the management of this Condominium and each Unit Owner in this Condominium, his successors and assigns, shall be prohibited from entering into any contract or agreement to provide pay television service with any party other than Declarant, or its assigns, which said prohibition shall be enforceable by injunction in a court of appropriate jurisdiction in Bay County, Florida.

32. WARRANTIES. THE DECLARANT DOES NOT WARRANT TO THE ASSOCIATION OR TO THE UNIT OWNERS OF THE CONDOMINIUM THE CONSTRUCTION OF, OR ANY PART OF, THE CONDOMINIUM PROPERTY, COMMON ELEMENTS OR UNITS, SAVE AND EXCEPT ANY EXPRESS WRITTEN WARRANTIES DELIVERED BY THE DECLARANT TO UNIT OWNERS AND ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR USE ARE HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMED. DECLARANT FURTHER DISCLAIMS ANY INTENT TO HAVE MADE ANY WARRANTY OR REPRESENTATION IN CONNECTION WITH THE CONDOMINIUM DOCUMENTS AND DISCLOSURE MATERIAL EXCEPT AS SPECIFICALLY SET FORTH HEREIN AND THEREIN, AND NO PERSON SHALL RELY UPON ANY WARRANTY OR REPRESENTATION NOT SO SPECIFICALLY AND EXPRESSLY MADE HEREIN OR BY ANY OTHER CONDOMINIUM DOCUMENT. ANY ESTIMATES OF COMMON EXPENSES, TAXES OR OTHER CHARGES ARE BELIEVED TO BE ACCURATE, BUT NO WARRANTY OR GUARANTEE IS MADE OR INTENDED NOR MAY ONE BE RELIED UPON EXCEPT WHERE SAME IS SPECIFICALLY AND EXPRESSLY WARRANTED OR GUARANTEED IN WRITING.

33. Execution of Documents Governmental Authorities.
The Declarant shall, on or the development of this Condominium may require from time to time the execution of certain documents required by the applicable governmental authorities having jurisdiction over the condominium complex and matters relating thereto. To the extent that said documents require the joinder of any or all property owners in this Condominium each of said owners, by virtue of his acceptance of a Special Warranty Deed to his Condominium Unit, does irrevocably give and grant to the Declarant, or any of its officers, individually, full power-of-attorney to execute said documents as his agent and in his place and stead.

34. Declarant's Right to Continue Construction. Declarant reserves the inalienable right to complete the construction of the Condominium Property, each section and recreational area thereof, notwithstanding that a Unit Owner has closed title to his individual Unit.

35. Notices. Whenever notices are required to be sent hereunder, the same shall be sent to the Unit Owners by certified mail, return receipt requested, at their place or residence in the Condominium, unless the Unit Owner has, by written notice duly receipted for, specified a different address. Notices to both the Association and the Declarant shall be delivered by certified mail, return receipt requested, at the primary office of the Association and Declarant at 150 Southeast Third Avenue, Miami, Florida 33131. All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice.

36. Interpretation. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the plural shall include the singular and the singular shall include the plural. The provisions of this Declaration shall be literally construed to effectuate its purposes of creating a uniform plan for the operation of a Condominium in accordance with the laws made and provided for same, to-wit: Chapter 718 of the Florida Statutes.

37. Sales Activity and Declarant's Rights. That until the Declarant has completed and sold all the Units of the Condominium, neither the Unit Owners nor the Association nor their use of the Condominium shall interfere with the completion of the contemplated sale of Units. The Declarant (or its duly authorized agents or assigns) may make such use of the unsold Units and the common areas as may facilitate such sale, including, but not limited to, the maintenance of sales offices for the showing of the property and display of signs, billboards, placards, and visual promotional materials. The Declarant may use unsold Units as model units or as sales offices for display purposes to prospective Condominium purchasers. The Declarant shall have the right to use parking spaces for prospective purchasers and such other parties as Declarant determines. The sales office, personal property, model furnishings, signs and all items pertaining to sale shall not be considered common elements and shall remain the property of the Declarant.

38. Changes in Declarant-Owned Units. Declarant shall have the right, without the vote or consent of the Association to (i) make alterations, additions, or improvements in, to, and upon Units owned by Declarant, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Declarant-owned Units; (iii) change the size and/or number of Declarant owned Units by subdividing one (1) or more Declarant-owned Units into two (2) or

more separate units, combining separate Declarant-owned Units (including those resulting from such subdivision or otherwise) into one (1) or more Units, or otherwise; and (iv) reapportion among Declarant-owned Units affected by such change in size or number pursuant to the preceding clause (iii), their appurtenant interest in the common elements and share of the common expenses; provided, however, that the percentage interest in the common elements of any Units (other than Declarant-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Declarant shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction. The provisions of this paragraph may not be added to, amended or deleted without the prior written consent of the Declarant.

39. Easement Agreement. The Unit Owners of the Condominium shall have the non-exclusive right to use a private road known as Horizon Boulevard, and legally described in Exhibit "G" attached hereto. Horizon Boulevard as legally described in Exhibit "G" attached hereto is owned in fee simple by the Declarant. Unit Owners' use of the land as described in Exhibit "G" is pursuant to and subject to a certain Easement Agreement, a copy of which is attached hereto as Exhibit "H", and made a part hereof as though set out in full. The term of the Easement Agreement is perpetual. The Condominium is responsible for the maintenance and repair of Horizon Boulevard, pursuant to and under the Easement Agreement attached hereto as Exhibit "H", which expenses include, but are not limited to, real property taxes, maintenance, and insurance. The foregoing expenses shall be borne by the Unit Owners of the Condominium as a portion of their monthly maintenance assessments and are deemed common expenses of the Condominium. The Easement Agreement provides that the Declarant shall have the right at any time, without the obligation to do so, to execute a deed of conveyance transferring title to Horizon Boulevard to the Association, and the Association shall be required to accept title thereto. The Unit Owners of the Condominium and the Association take subject to all of the terms, conditions, covenants and provisions of the Easement Agreement, and said Agreement is deemed a covenant running with the land.

40. Limited Common Elements. The balconies, sun decks, entry ways, porches, terraces and patios of Condominium Units as shown on Exhibit "B" hereto are limited common elements usable only by appurtenant Unit Owners. Those portions of the common elements reserved for the use of certain Unit Owners or a certain Unit Owner, to the exclusion of the Unit Owners, are deemed limited common elements. Any expense for the maintenance, repair or replacement relating to limited common elements shall be treated as and paid for as part of the common expenses of the Association, unless otherwise specifically provided in this Declaration and exhibits attached hereto. Should said maintenance, repair or replacement be caused by negligence or misuse by a Unit Owner, his family, guests, servants and invitees, he shall be responsible therefor, and the Association shall have the right to levy an assessment against the Owner of said Unit, which assessment shall have the same force and effect as all other special assessments. A Unit Owner shall have the right to the exclusive use of his limited common elements, including terrace, patio, porch, balcony, entry way or sun deck and shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling, within said exterior balcony, entry way, sun deck, terrace, porch, or patio and the fixed and/or sliding glass door(s) in the entranceway to said patio, porch, terrace, balcony, or sun deck, and the replacement of light bulbs on said terrace, porch, patio, balcony, or sun deck, and the wiring, electrical outlets and fixtures thereon, if any. A Unit Owner may not screen or enclose his balcony, sun deck, terrace, porch, or patio except with the prior written approval of the Board of Directors of the Association.

41. Recreation and Common Areas Agreement. Pursuant to Section 718.114, Florida Statutes, the Association has entered into a Recreation and Common Areas Agreement referred to as such, with the Declarant. Pursuant to the Recreation and Common Areas Agreement, the Association has acquired an interest in and to the recreational facilities, lands, and improvements described thereunder (the "Recreational Facilities") including the right to use the same until such time as such Recreational Facilities are conveyed to the Association as provided by the terms thereof. In accordance with Section 718.114, Florida Statutes, and the Recreation and Common Areas Agreement, all monies due or to become due under the provisions of the Recreation and Common Areas Agreement for the full term thereof, before and after the conveyance to the Association of the ownership of the Recreational Facilities, are declared for all purposes to be common expenses of the Condominium.

The Declarant and the Association, by their execution of this Declaration of Condominium, and each Unit Owner, by virtue of their taking title to a Condominium Unit, agree that notwithstanding the fact that the Recreation and Common Areas Agreement is attached to this Declaration of Condominium and was recorded in the Public Records subsequent or simultaneous to the recording of this Declaration of Condominium, that said Recreation and Common Areas Agreement shall be deemed to have been recorded in the Public Records prior to the recording of this Declaration of Condominium.

Each Unit Owner agrees to be bound by the terms and conditions of said Recreation and Common Areas Agreement and agrees to make payments to the Association of his share of the monies due, pursuant to and in the amount of proportion, or percentage amount, if so stated, as specified in the Recreation and Common Areas Agreement and this Declaration of Condominium. It shall be mandatory for each Unit Owner to make his pro rata payments of the foregoing expenses, as assessed by the Association, as part of the common expense, regardless of whether or not said Unit Owner uses the Recreational Facilities.

Neither the Recreational Facilities described under the Recreation and Common Areas Agreement, nor the Association's or its members' rights thereunder shall be deemed a part of the Condominium Property of the Condominium created by virtue of this Declaration of Condominium.

The Recreation and Common Areas Agreement will permit each Owner or lessee of each Unit in the Condominium to have the right, privilege, access, and use of the Recreational Facilities thereunder. The Recreation and Common Areas Agreement has been entered into for the use and benefit of all Unit Owners in this Condominium and their lessees or unit owners of all other condominiums or rental type apartment buildings in the Project constructed or to be constructed on lands adjoining the Condominium.

Each Unit Owner in this Condominium and each Unit Owner or lessee in all other buildings constructed or to be constructed on lands adjoining the Condominium in the Project shall be entitled to the use and enjoyment of the Recreational Facilities under said Recreation and Common Areas Agreement, subject to the Rules and Regulations as promulgated by the Association. However, all such Rules and Regulations shall be subject to the approval of the Recreational Facilities Owner and his paramount right to enact, adopt, and amend the same.

In order to secure the faithful performance of the Association's obligation under the Recreation and Common Areas Agreement, each Unit Owner has pledged and granted a lien upon his interest in the Condominium in favor of the Association as set forth in this Declaration for payment of assessments for the expenses of the Recreation Facilities as common expenses of the Condominium.

Prior to the conveyance of the Recreation Facilities to the Association, the Recreation and Common Areas Agreement may be amended by an instrument in writing, executed by the Declarant and the Association, as determined by majority vote of members of the Board of Directors of the Association. Subsequent to the conveyance of the Recreation Facilities to the Association an amendment to the Recreation and Common Areas Agreement shall be made solely in accordance with the same requirements for amending this Declaration, the By-Laws, and Articles of Incorporation as set forth in paragraph 23 hereof. Notwithstanding the foregoing, no amendment to the Recreation and Common Areas Agreement shall materially impair the rights of Unit Owners to the use and enjoyment of the Recreational Facilities without the Owners of Units so affected and record Owners of Institutional Mortgages thereon, joining in the execution of said Amendment; and so long as Declarant holds any Units for sale to the public, in the ordinary course of business, no such amendment shall be made to the Recreation and Common Areas Agreement without the prior written consent of Declarant. Furthermore, no amendment shall be effective until duly recorded in the Public Records of Bay County, Florida, and the recording of said Amendment shall constitute an Amendment to this Declaration of Condominium as to the provisions herein relative to said Recreation and Common Areas Agreement. No Amendment, as referred to in this paragraph, shall alter any provisions relating to the Institutional Mortgagees as set forth in the Recreation and Common Areas Agreement or this Declaration without the prior written consent of all such Institutional Mortgagees.

It is specifically recognized that the initial Recreational Facilities Owner, as the Declarant, may control the original Board of Directors and officers of the Association, and that such circumstances shall not, and cannot, be construed or considered as a breach of his duties to the Association nor as possible grounds to invalidate such Recreation and Common Areas Agreement in whole or in part.

Whenever any of the provisions of the Recreation and Common Areas Agreement shall be in conflict with the provisions of this Declaration, then the provisions of the Recreation and Common Areas Agreement shall be controlling.

Each Unit Owner, his heirs, personal representatives, successors, and assigns, shall be bound by said Recreation and Common Areas Agreement to the same extent and effect as if he has executed said Recreation and Common Areas Agreement for the purposes therein expressed, including, but not limited to:

- (a) Adopting, ratifying, confirming and consenting to the execution of the Recreation and Common Areas Agreement by the Association;
- (b) Covenanting and promising to perform each and every of the covenants, promises, and undertakings to be performed by Unit Owners in the cases provided therefor in said Recreation and Common Areas Agreement;
- (c) Ratifying, confirming, and approving each and every provision of said Recreation and Common Areas Agreement and acknowledging that all of the terms and provisions thereof, are reasonable; and,
- (d) Agreeing that the persons acting as directors and officers of the Association in the acquisition of such interest under the Recreation and Common Areas Agreement, have not breached any of their duties or obligations to the Association.

- (e) Subjecting all of his right, title and interest in his Condominium Parcel and tangible personal property therein to the lien rights granted to the Developer and the Association under the said Recreational Land Use Agreement.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed in its name, this 24th day of October, 1979, in Dade County, Florida.

Witnesses:

SOUTH ATLANTIC FINANCIAL CORP.,
a Florida corporation

C. F. C. C.
Secretary

By:

R. A. Krause
R. A. KRAUSE,
SENIOR VICE PRESIDENT.

FOR GOOD AND VALUABLE CONSIDERATIONS, receipt of which is hereby acknowledged Horizon South Condominium Association, Inc., a Florida non-profit membership corporation, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations, and burdens imposed on it by the provisions of the Declaration.

IN WITNESS WHEREOF, Horizon South Condominium Association, Inc., has this 24th day of October, 1979, caused these presents to be signed in its name by its President and its corporate seal affixed at Dade County, Florida.

Witnesses:

HORIZON SOUTH CONDOMINIUM ASSOCIATION,
INC., a Florida non-profit membership
corporation

J. C. C.
Secretary

By:

R. A. Krause
R. A. KRAUSE, PRESIDENT
(CORPORATE SEAL)

STATE OF FLORIDA

SS:

COUNTY OF DADE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared R. A. KRAUSE well known to me to be the Senior Vice President of South Atlantic Financial Corp., a Florida corporation, and he acknowledged executing the same freely and voluntarily under authority vested in him by said corporation, on behalf of the said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 24th day of October, 1979.

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES ON
SEPTEMBER THREE, ONE, NINE, EIGHTY, TWO

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

NOTARY
PUBLIC

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared R. A. KRAUSE as the President of Horizon South Condominium Association, Inc., a Florida corporation Not-For-Profit, and that he acknowledged executing the same freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 22nd day of 1979.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE

My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES OCT 29 1982
I CERTIFY THAT I AM THE UNDERSIGNED

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EXHIBIT "A" TO
DECLARATION OF CONDOMINIUM FOR
HORIZON SOUTH, A CONDOMINIUM

LEGAL DESCRIPTION

EXHIBIT "A"

LEGAL DESCRIPTION

Commence at the Northwest corner of Original Lot 2, Section 13, Township 3 South, Range 17 West, Bay County, Florida; thence South 1°07'05" West along the West line of said Lot 2 for 2476.32 feet to the North Right-of-Way line of U. S. Highway 98; thence South 60°12'42" East along said North Right-of-Way line for 979.87 feet; thence North 29°47'18" East at a right angle for 200.00 feet to the Point Of Beginning; thence South 60°12'42" East, parallel with said North Right-of-Way line for 415.83 feet to the East line of said Original Lot 2; thence North 1°06'40" East along said East line of Original Lot 2 for 2120.79 feet to the South Right-of-Way line of State Road 30 Alternate; thence North 67°22'07" West along said South Right-of-Way line for 73.03 feet; thence South 12°02'32" West for 746.01 feet to the point of commencement of a curve concave to the East and having a radius of 292.10 feet; thence Southerly along said curve for an arc distance of 112.72 feet, said arc having a chord of 112.02 feet bearing South 0°59'14" West; thence South 10°04'04" East for 554.38 feet to the point of commencement of a curve concave to the West and having a radius of 97.75 feet; thence Southerly along said curve for an arc distance of 68.00 feet, said arc having a chord of 66.63 feet bearing South 9°51'37" West; thence South 29°47'18" West for 479.23 feet; thence South 60°12'42" East for 15.00 feet; thence South 29°47'18" West for 75.42 feet to the Point Of Beginning.

LESS AND EXCEPT FROM THE FOREGOING DESCRIBED PROPERTY THE FOLLOWING TWO PARCELS:

PARCEL I. Commence at the Northwest corner of Original Lot 2, Section 13, Township 3 South, Range 17 West, Bay County, Florida; thence South 1°07'05" West along the West line of said Lot 2 for 2476.32 feet to the North Right-of-Way line of U. S. Highway 98; thence South 60°12'42" East along said North Right-of-Way line for 979.87 feet; thence North 29°47'18" East for 275.42 feet; thence North 60°12'42" West for 15.00 feet; thence North 29°47'18" East for 243.00 feet to the Point Of Beginning; thence continue North 29°47'18" East for 148.83 feet; thence South 60°12'42" East for 175.26 feet to the East line of said Original Lot 2; thence South 1°06'40" West along said East line of Original Lot 2 for 28.99 feet; thence South 29°47'18" West for 123.40 feet; thence North 60°12'42" West for 189.17 feet to the Point Of Beginning.

AND

PARCEL II. Commence at the Northwest corner of Original Lot 2, Section 13, Township 3 South, Range 17 West, Bay County, Florida; thence South 1°07'05" West along the West line of said Lot 2 for 2476.32 feet to the North Right-of-Way line of U. S. Highway 98; thence South 60°12'42" East along said North Right-of-Way line for 979.87 feet; thence North 29°47'18" East for 275.42 feet; thence North 60°12'42" West for 15.00 feet; thence North 29°47'18" East for 479.23 feet to the point of commencement of a curve concave to the West and having a radius of 97.75 feet; thence Northerly along said curve for an arc distance of

68.00 feet, said arc having a chord of 66.63 feet bearing North 9°51'37" East; thence North 10°04'04" West for 321.64 feet to the Point of Beginning; thence continue North 10°04'04" West for 102.50 feet; thence North 61°55'59" East for 77.53 feet; thence South 60°12'42" East for 132.47 feet to the East line of said Original Lot 2; thence South 1°06'40" West along said East line of Original Lot 2 for 40.00 feet; thence South 29°47'18" West for 109.24 feet; thence North 60°12'42" West for 127.22 feet to the Point Of Beginning.

EXHIBIT "B" TO
DECLARATION OF CONDOMINIUM
FOR HORIZON SOUTH, A CONDOMINIUM

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Surveyor's Certificate	B-1
Legal Description & Survey	B-2
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Floor Plans:	
Unit Types A & B Ground Floor Buildings 1, 7 & 8	B-4
Unit Types A & B Second Floor Buildings 1, 7 & 8	B-5
Unit Type C Buildings 9, 10, 11, 12, 13, 14 & 15	B-6
Unit Type D Buildings 3, 4 & 5	B-7

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SURVEYOR'S CERTIFICATE

This certification, made this 23rd day of October, 1979, by the undersigned Registered Land Surveyor authorized to practice in the State of Florida, is made pursuant to the provisions of Section 718.104(4)(e) of the Florida Statutes (1977), as amended, and certifies that the Survey Exhibit (Sheets B-2 through B-7, both inclusive) to the Declaration of Condominium for Horizon South, a Condominium, consisting of the survey, plot plan, legal description, floor plans and graphic descriptions and other material, together with the said Declaration are in sufficient detail to identify the common elements and each unit, and their relative locations and approximate dimensions. Further, this is a certification that the following six (6) pages consisting of the survey, plot plan, legal description, floor plans and graphic descriptions and other material in connection herewith and the construction of the improvements is substantially complete so that the material, together with the provisions of the Declaration describing the Condominium property, is an accurate representation of the location and dimensions of the improvements, and that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.


BUELL H. HARPER, JR.
Registered Land Surveyor No. 1718
State of Florida



A PORTION OF GOV'T LOT 2, SECTION 13,



ALF VERNOR'S CERTIFICATE

The undersigned personally, after examining the documents presented to me, hereby certifies that the same are the true and correct copies of the original documents on file in the office of the Secretary of the State of California, and that the same are the true and correct copies of the original documents on file in the office of the Secretary of the State of California.

Given at the City of Los Angeles, this 1st day of January, 1911.

Alfred Vernor, Secy.

Notary Public for the State of California.

My commission expires 1st day of January, 1912.

ALF VERNOR, Secy.

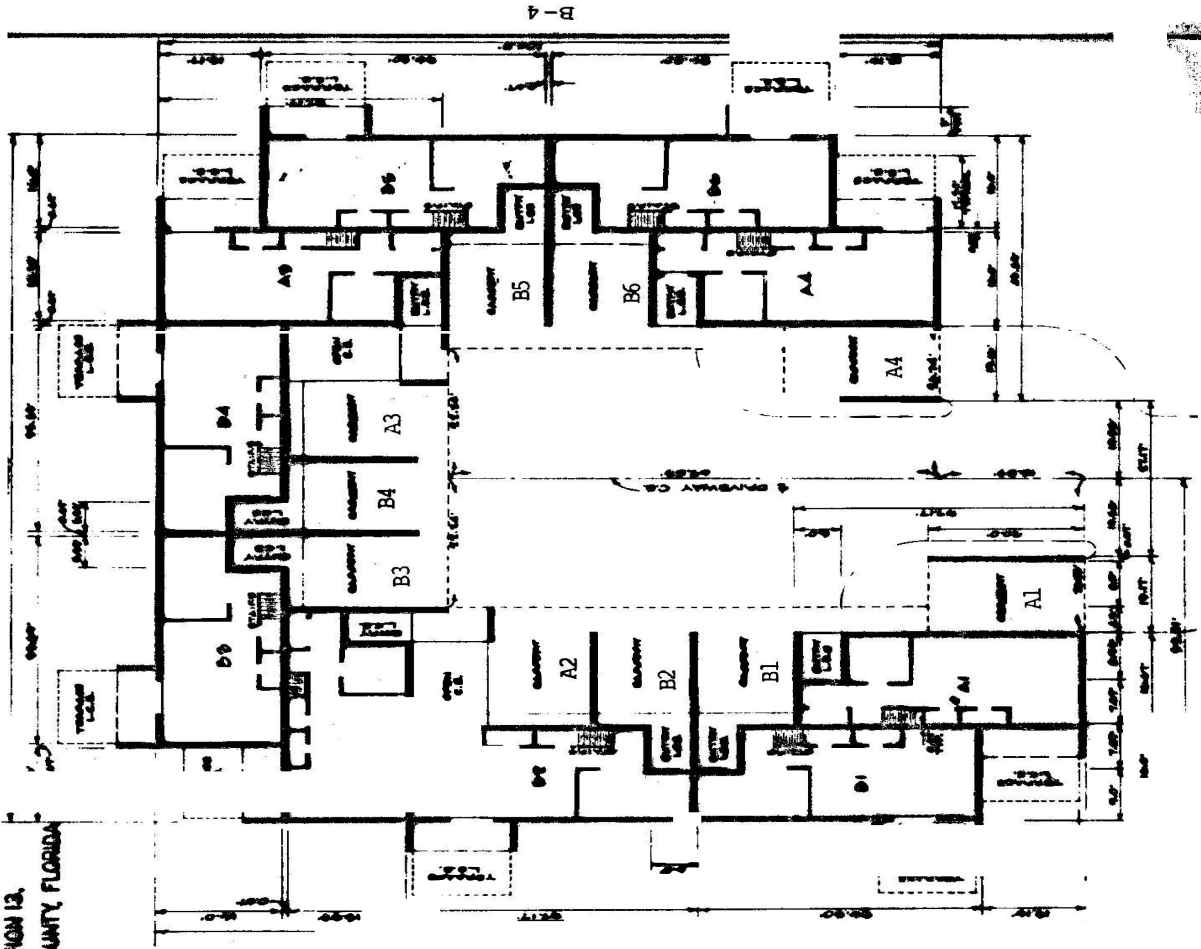
Notary Public for the State of California.

My commission expires 1st day of January, 1912.



HORIZON SOUTH, A CONDOMINIUM

A PORTION OF GOVT LOT 2, SECTION 13,
TOWNSHIP 3 SOUTH, RANGE 17 WEST, BAY COUNTY, FLORIDA



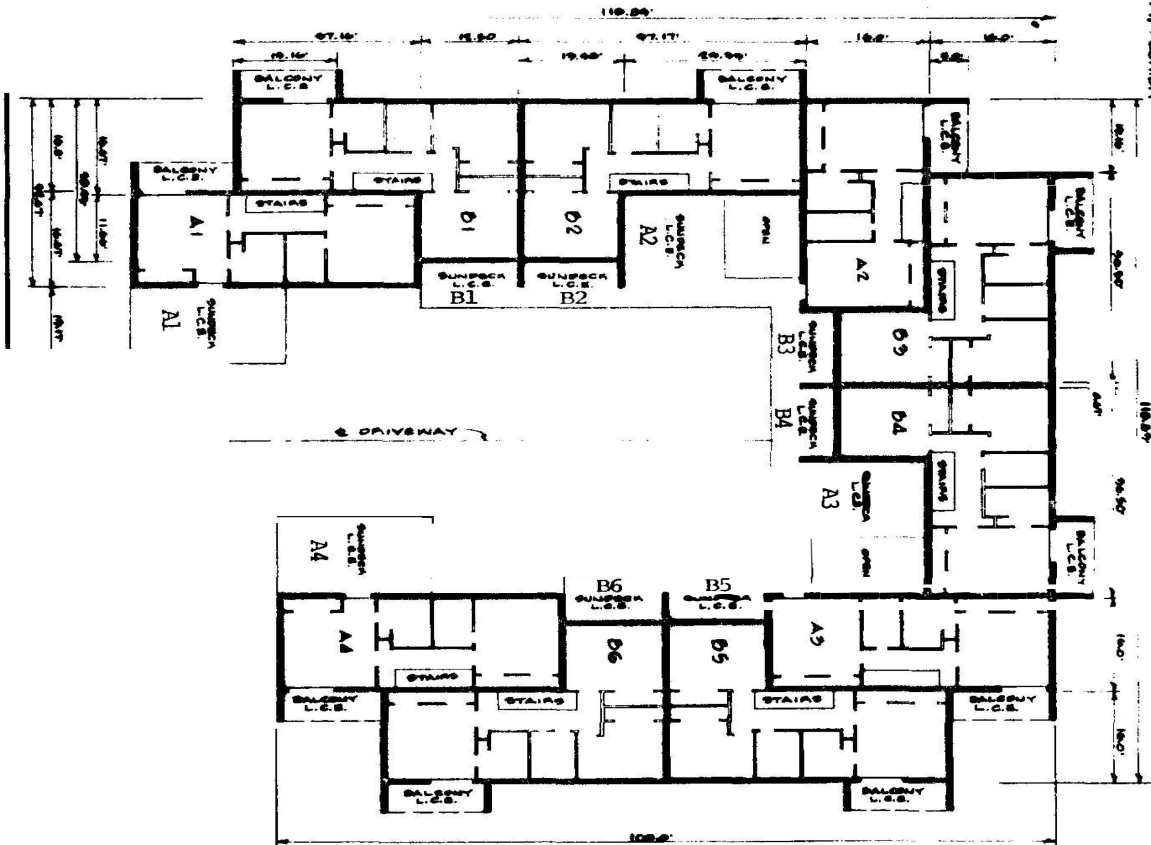
UNIT TYPES A1
B1, B2, B3, B4, B5, B6, B-4
DUI 1, 7, AND

EXHIBIT D

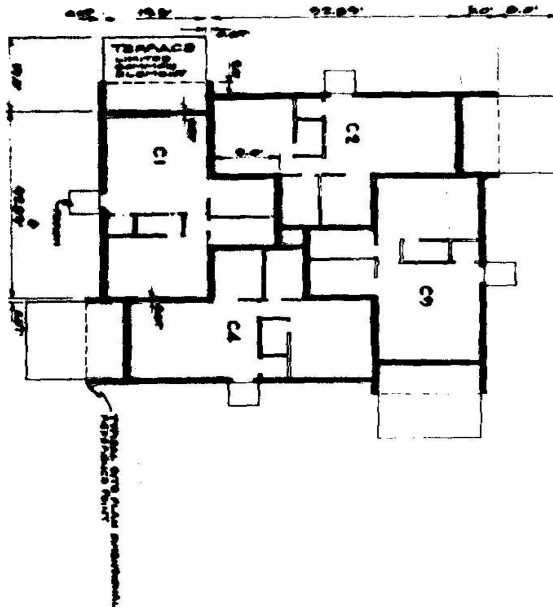
HORIZON SOUTH A CONDOMINIUM

A PORTION OF GOV'T LOT 2, SECTION 13,
TOWNSHIP 3 SOUTH, RANGE 17 WEST, BAY COUNTY, FLORIDA

NIT TYPES A, B
SECOND FLOOR
1, 7 0 6



HORIZON SOUTH, A CONDOMINIUM
A PORTION OF GOVT LOT 2, SECTION 1A,
TOWNSHIP 3 SOUTH, RANGE 17 WEST, BAY COUNTY, FLORIDA



EXHIBIT

UNIT TYPE 'C'
BUILDINGS 9, 10, 11, 12, 13 AND 14

HORIZON SOUTH, A CONDOMINIUM
 A PORTION OF GOV'T LOT 2, SECTION 13,
 TOWNSHIP 3 SOUTH, RANGE 17 WEST, BAY COUNTY, FLORIDA

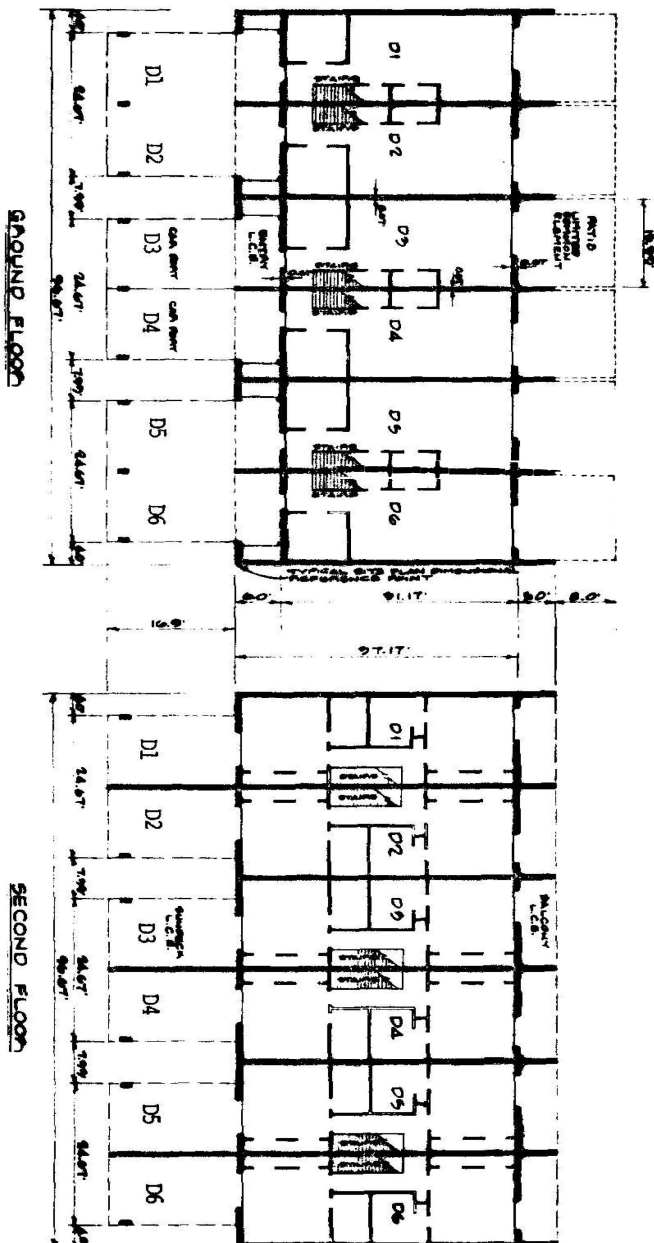


EXHIBIT 9

UNIT TYPE "D"
 BUILDINGS 3, 4, AND 5

EXHIBIT "C" TO
DECLARATION OF CONDOMINIUM
FOR HORIZON SOUTH, A CONDOMINIUM

PERCENTAGE OWNERSHIP OF COMMON ELEMENTS;
PERCENTAGE SHARE OF COMMON EXPENSES;
PERCENTAGE SHARE OF COMMON SURPLUS

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EXHIBIT " C "
TO
DECLARATION OF CONDOMINIUM
FOR
HORIZON SOUTH, A CONDOMINIUM

The Percentage Ownership of the undivided share in the common elements appurtenant to each Condominium Unit and each Condominium Unit's percentage share of the common surplus and each Condominium Unit's percentage share of the common expenses of the Condominium.

Building 1

Unit A-1	1.52026536
Unit A-2	1.52026536
Unit A-3	1.52026536
Unit A-4	1.52026536
Unit B-1	1.74139487
Unit B-2	1.74139487
Unit B-3	1.74139487
Unit B-4	1.74139487
Unit B-5	1.74139487
Unit B-6	1.74139487

Building 3

Unit D-1	1.57409293
Unit D-2	1.57409293
Unit D-3	1.57409293
Unit D-4	1.57409293
Unit D-5	1.57409293
Unit D-6	1.57409293

Building 4

Unit D-1	1.57409293
Unit D-2	1.57409293
Unit D-3	1.57409293
Unit D-4	1.57409293
Unit D-5	1.57409293
Unit D-6	1.57409293

Building 5

Unit D-1	1.57409293
Unit D-2	1.57409293
Unit D-3	1.57409293
Unit D-4	1.57409293
Unit D-5	1.57409293
Unit D-6	1.57409293

Building 7

Unit A-1	1.52026536
Unit A-2	1.52026536
Unit A-3	1.52026536
Unit A-4	1.52026536
Unit B-1	1.74139487
Unit B-2	1.74139487
Unit B-3	1.74139487
Unit B-4	1.74139487
Unit B-5	1.74139487
Unit B-6	1.74139487

Building 8

Unit A-1	1.52026536
Unit A-2	1.52026536
Unit A-3	1.52026536
Unit A-4	1.52026536
Unit B-1	1.74139487
Unit B-2	1.74139487
Unit B-3	1.74139487
Unit B-4	1.74139487
Unit B-5	1.74139487
Unit B-6	1.74139487

Building 9

Unit C-1	0.78850126
Unit C-2	0.78850126
Unit C-3	0.78850126
Unit C-4	0.78850126

Building 10

Unit C-1	0.78850126
Unit C-2	0.78850126
Unit C-3	0.78850126
Unit C-4	0.78850126

Building 11

Unit C-1	0.78850126
Unit C-2	0.78850126
Unit C-3	0.78850126
Unit C-4	0.78850126

Building 12

Unit C-1	0.78850126
Unit C-2	0.78850126
Unit C-3	0.78850126
Unit C-4	0.78850126

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Building 13

Unit C-1	0.78850126
Unit C-2	0.78850126
Unit C-3	0.78850126
Unit C-4	0.78850126

Building 14

Unit C-1	0.78850126
Unit C-2	0.78850126
Unit C-3	0.78850126
Unit C-4	0.78850126

Building 15

Unit C-1	0.78850126
Unit C-2	0.78850126
Unit C-3	0.78850126
Unit C-4	0.78850126

EXHIBIT "D" TO
DECLARATION OF CONDOMINIUM
FOR HORIZON SOUTH, A CONDOMINIUM

ARTICLES OF INCORPORATION FOR
HORIZON SOUTH CONDOMINIUM ASSOCIATION, INC.

State of Florida



Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of

HORIZON SOUTH CONDOMINIUM ASSOCIATION, INC.

filed on 22nd day of October, A.D., 1979

The Charter Number for this corporation is 749451



CORP 104 Rev. 5-79

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the

24th day of October,
1979

Secretary of State

ARTICLES OF INCORPORATION FOR
HORIZON SOUTH CONDOMINIUM ASSOCIATION, INC.

THE UNDERSIGNED hereby associate themselves for the purpose of forming a corporation not for profit under and pursuant to the provisions of Chapter 617 and 718, Florida Statutes, 1977, as amended, and do certify as follows:

I

NAME

The name of this corporation shall be HORIZON SOUTH CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be herein referred to as the "Association".

II

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to Section 718.111, Florida Statutes, 1977, as amended, for the operation of Horizon South, a Condominium, (the "Condominium") and for the operation of such recreational facilities as may be owned or subject to regulation by the Association, and for such other matters as set forth in the Declaration of Condominium for Horizon South, a Condominium.

III

POWERS

The powers of the Association shall include and the Association shall be governed by, the following provisions:

1. The Association shall have all of the common law and statutory powers and duties set forth in Chapter 718, Florida Statutes, 1977, as amended (the "Condominium Act") except as limited by these Articles and the formal Declaration of Condominium which will be recorded amongst the Public Records of Bay County, Florida, at the time the Condominium is established and all of the powers and duties reasonably necessary to operate the Condominium pursuant to its Declaration and as it may be amended from time to time.

2. The Association shall also have all of the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of these Articles and/or the Condominium Act.

IV

MEMBERS

The qualification of members, the manner of their admission to membership, the termination of such membership and voting by members shall be as follows:

1. The record owners of all condominium units in the Condominium shall be members of the Association, and no other persons or entities shall be entitled to membership except for, the subscribers hereto.

2. Membership shall be established by the acquisition of ownership of fee title to, or fee interest in, a condominium unit in the Condominium, whether by conveyance, devise, judicial decree, or otherwise, subject to the provisions of the Declaration of

-AI-1-

Condominium for the Condominium, and by the recordation amongst the Public Records of Bay County, Florida, of the deed or other instrument establishing the acquisition and designating the unit affected thereby and by the delivery to the Association of a true copy of such deed or other instrument. The new owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior owner as to the unit designated shall be terminated.

3. The share of a member in the funds and assets of the Association, in its common elements and its common surplus, and membership in this Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit in this Condominium.

4. On all matters upon which the membership shall be entitled to vote, there shall be one vote for each condominium unit, which vote may be exercised or cast in such manner as may be provided in the By-Laws of the Association. Any person or entity owning more than one unit shall be entitled to one vote for each unit he owns.

V

TERM

The term for which this Association is to exist shall be perpetual.

VI

SUBSCRIBERS

The names and residences of the Subscribers to these Articles of Incorporation are as follows:

NAME	ADDRESS
R. A. Krause	150 SE Third Avenue Miami, Florida 33131
Thomas E. Beier	150 SE Third Avenue Miami, Florida 33131
Gerard E. Faber	150 SE Third Avenue Miami, Florida 33131

VII

OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice-President, Secretary and Treasurer and, if any, the Assistant Secretary and Assistant Treasurer, subject to the directions of the Board of Directors.

The Board of Directors shall annually elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board of Directors shall, from time to time, determine. The President shall be elected annually from among the membership of the Board of Directors, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, the office of President and Vice-President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

The names and addresses of the officers who are to serve until their successors are elected by the Board of Directors, or until their earlier resignation, removal from office or death, are as follows:

<u>TITLE</u>	<u>NAME</u>	<u>ADDRESS</u>
President	R. A. Krause	150 SE Third Avenue Miami, Florida 33131
Vice President	Thomas E. Beier	150 SE Third Avenue Miami, Florida 33131
Secretary/Treasurer	Gerard E. Faber	150 SE Third Avenue Miami, Florida 33131

VIII

BOARD OF DIRECTORS

All corporate powers shall be exercised by, or under the authority of, and the business and affairs of the Association shall be managed under the direction of the Board of Directors (the "Board") of this corporation. The Board shall consist of the number of directors determined by the By-Laws, but not less than three directors, and in the absence of such determination shall consist of three directors. The members of the first Board of Directors need not be members of the Association.

Directors of the Association shall be elected in accordance with. and in the manner set forth in the By-Laws.

The names and addresses of the members of the first Board of Directors, who shall hold office until their successors are elected and have qualified; or until their earlier resignation, removal from office or death, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
R. A. Krause	150 SE Third Avenue Miami, Florida 33131
Thomas E. Beier	150 SE Third Avenue Miami, Florida 33131
Gerard E. Faber	150 SE Third Avenue Miami, Florida 33131

IX

BY-LAWS

The By-Laws of the Association shall be adopted by the Board of Directors, and may be altered, amended or rescinded in the manner provided for in Article X hereof.

X

AMENDMENTS

Amendments to these Articles of Incorporation and the By-Laws of the Association shall be proposed and adopted 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 is to be considered.

- B. A resolution for the adoption of a proposed amendment may be proposed by either a majority of the Board of Directors of the Association or by not less than one-third (1/3) of 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. Such approvals must be either by:

- Not less than sixty-six and two-thirds percent (66-2/3%) of the entire membership of the Board of Directors and by not less than fifty-one percent (51%) of the votes of the entire membership of the Association, or
- (2) Not less than seventy-five percent (75%) of the votes of the entire membership of the Association, or
- (3) In the alternative, an amendment may be made by an agreement signed and acknowledged by all Unit Owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Bay County, Florida.

Proviso Provided however:

- (4) That no amendment shall be made or be valid which shall in any manner impair the security of any Institutional Mortgagee having a mortgage or other lien against any Condominium Parcel.
- (5) That no amendment shall be made increasing or decreasing a Unit Owners's percentage of ownership in the common elements, nor which would materially alter or modify the appurtenances to a Condominium Unit, or materially change the configuration of the perimetrical boundaries thereof, or change the proportion of the percentage by which the Owner of a Condominium Parcel shares the common expenses and/or owns the common surplus unless the Unit Owner or Unit Owners so affected and all record owners of liens shall join in the execution of the amendment; provided, however, nothing contained within this Declaration shall be construed as a limitation on the Declarant's right to adjust and alter any interior walls or partitions of a Unit or other interior configuration of a Unit which do not materially affect the size of the Unit or the configuration of the perimetrical boundaries of said Unit.
- (6) That no amendment shall be made or be valid so long as the Declarant is the Owner of any Unit within the Condominium unless the approval of the Declarant is expressly noted thereon in writing except that this clause (6) shall not be applicable with respect to amendments not detrimental to the sale of Units by the Declarant.
- (7) That no amendment shall be made or be valid which would in any way affect the liability or duties of the Association or Declarant under the Recreation Agreement and Easement Agreement unless the approval of Declarant is expressly noted thereon in writing.
- (8) Notwithstanding anything to the contrary contained herein or in the Declaration, and provided the property rights of Unit Owners are not materially adversely affected, a defect, omission, or error in the Declaration of Condominium or in the Articles of Incorporation, By-Laws, or such other documentation required by law to establish the condominium form of ownership may be corrected by an amendment to the Declaration of Condominium or such other documentation as may be required by law, by the approval and execution of such amendment by the Association. The

approval and adoption of such an amendment for the curing of defects, errors or omissions as aforesaid may be made by a vote of Sixty-six and two thirds percent (66-2/3%) of the entire membership of the Board of Directors of the Association in lieu of, but not in limitation of the use of, the aforescribed methods of amendment in this Article.

- C. A copy of each amendment shall be certified by the president or vice-president and secretary or assistant secretary or treasurer of the Association as having been duly adopted, filed with the Secretary of State, State of Florida, pursuant to the provisions of applicable Florida Statutes, and a copy, certified by the said Secretary of State, shall be recorded in the Public Records of Bay County, Florida, and shall be effective when recorded in the Public Records of Bay County, Florida.
- D. Amendments to the Declaration, Articles, By-Laws or other condominium documentation for the enlargement of common elements as may be permitted by Florida Statutes shall be approved and executed in accordance with the provisions of this Article.

XI

INDEMNIFICATION

A. The Association shall indemnify any person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association; and, with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonable entitled to indemnity for such expenses which such court shall deem then proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, he had no reasonable cause to believe that his conduct was unlawful.

B. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph A above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

C. Any indemnification under Paragraph A above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Paragraph A above. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by a majority of the members.

D. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

E. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, both as to action in his official capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

F. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

XII

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the corporation is:

150 SE Third Avenue
Miami, Florida 33131

The name of the corporation's initial registered agent at such initial registered office is:

Gerard E. Faber

XIII

CONSTRUCTION

All words as used herein shall have the same definitions as attributed to them in the Declaration of Condominium for Horizon South, a Condominium.

FILED
OCT 22 4 32 '79
CLERK OF STATE
MIAMI, FLORIDA

IN WITNESS WHEREOF, the Subscribers have affixed their signatures this 15th day of October, 1979.


R. A. KRAUSE


THOMAS E. BEIER


GERARD E. FABER

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was sworn to, subscribed and acknowledged before me this 15th day of October, 1979, by R.A. KRAUSE, THOMAS E. BEIER and GERARD E. FABER.


NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

MY COMMISSION EXPIRES:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES OCT. 29 1982
BONDED THRU GENERAL INS. UNDERWRITERS

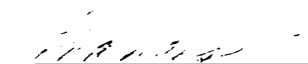
ACCEPTANCE BY REGISTERED AGENT

The undersigned hereby accepts the appointment as Registered Agent of the above-named corporation.


GERARD E. FABER

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was sworn to, subscribed and acknowledged before me this 15th day of October, 1979, by GERARD E. FABER.


NOTARY PUBLIC,
AT LARGE

MY COMMISSION EXPIRES:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES OCT. 29 1982
BONDED THRU GENERAL INS. UNDERWRITERS

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