

DECLARATION OF CONDOMINIUM

SEAWATCH ON-THE-BEACH, A CONDOMINIUM

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I.

SUBMISSION STATEMENT

HI-AT Development, Inc., a Florida Corporation being the Owner of record of the fee simple title to the real property situate, lying and being on Estero Island, Lee County, Florida, as more particularly described and set forth as the Condominium Property in the Survey Exhibits attached hereto as "Exhibit No. 1," which are made a part hereof as though fully set forth herein (together with equipment, furnishings and fixtures therein contained not personally owned by Unit Owners), hereby states and declares that said realty, together with improvements thereon, together with riparian and littoral rights as may be applicable and appurtenant thereto, and together with non-exclusive easements over the Property described and as set forth to this Declaration of Condominium, is submitted to Condominium ownership, pursuant to the Condominium Act of the State of Florida, F.S. 718, Et Seq., and the provisions of said Act are hereby incorporated by reference and included herein thereby, and does herewith file for record this Declaration of Condominium.

Definitions: - As used in this Declaration of Condominium and By-Laws and Exhibits attached hereto, and all Amendments thereof, unless the context otherwise requires, the following definitions shall prevail:

A. Declaration, or Declaration of Condominium, means this instrument, as it may be from time to time amended.

B. Association, means Seawatch On-The-Beach Condominium Association, Inc., a Florida non-profit Corporation, said entity is responsible for the operation of the Condominium.

C. By-Laws, means the By-Laws of the Association, as they exist from time to time.

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

E. Limited Common Elements, means and includes those Common Elements which are reserved for the use of a certain Unit or Units, to the exclusion of all other Units.

F. Condominium, means that form of ownership of Condominium Property under which Units of improvements are subject to ownership by one or more Owners, and there is appurtenant to each Unit, as part thereof, an undivided share in the Common Elements.

G. Condominium Act, means and refers to the Condominium Act of the State of Florida (F.S. 718 Et Seq.).

H. Common Expenses, means the expenses for which the Unit Owners are liable to the Association.

This Instrument was prepared by:

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

J. Condominium Property, means and includes the land in a Condominium, whether or not contiguous, and all improvements thereon, and all easements and rights appurtenant thereto, intended for use in connection with the Condominium.

K. Assessment, means a share of the funds required for the payment of common expenses which, from time to time, are assessed against the Unit Owners.

L. Condominium Unit, or Unit, is a Unit as defined in the Condominium Act, referring therein to each of the separate and identified Units delineated in the Survey attached to the Declaration as Exhibit No. 1, and when the context permits, the Condominium Parcel includes such Unit, including its share of the Common Elements appurtenant thereto.

M. Condominium Parcel, or Parcel, means a Unit, together with the undivided share in the Common Elements which are appurtenant to the Unit.

N. Unit Owner, or Owner of a Unit, or Parcel Owner, means the Owner of a Condominium Parcel.

O. Developer, means HI-AT Development, Inc., a Florida Corporation its successors and assigns.

P. Institutional Mortgagee, means a Bank, Savings and Loan Association, Insurance Company or Union Pension Fund authorized to do business in the United States of America, an Agency of the United States Government, a real estate or mortgage investment trust, the Developer or any assignee of a mortgage held by the Developer, or a lender generally recognized in the community as an Institutional type lender.

Q. Occupant, means the person or persons, other than the Unit Owner, in possession of a Unit.

R. Condominium Documents, means this Declaration, the By-Laws and all Exhibits annexed hereto, as the same may be amended from time to time.

S. Board of Administration, or Board of Directors, means the representative body responsible for administration of the Association.

T. Management Agreement, means and refers to that certain Agreement attached to this Declaration and made a part hereof, which provides for the management of the Condominium Property.

U. Management Firm, means and refers to the entity identified as the Management Firm in the Management Agreement attached to this Declaration, its successors and assigns. The Management Firm shall be responsible for the management of the Condominium Property as provided in the Management Agreement attached to this Declaration and made a part hereof.

V. Maintenance fee, means a share of the funds required for the payment of those expenses associated with a Unit committed to Interval Ownership, which, from time to time, are assessed against the Owners of Unit Weeks within such Unit.

W. Institutional First Mortgage, means any first mortgage held by an Institutional mortgagee.

X. Unless the context otherwise requires, all other terms used in this Declaration shall be assumed to have the meaning attributed to said term by Section 718.103, of the Condominium Act, as of the date of this Declaration.

Y. The following definitions shall refer only to those Units committed to and sold under a plan of "Interval Ownership":

1. "Interval Ownership," is a concept whereby Units and the share of the Common Elements assigned to the Unit are conveyed for periods of time, the purchaser receiving a stated time period for a period of years, together with a remainder over in fee simple as tenant in common with all other purchasers of "Unit Weeks" in each such Condominium Unit in that percentage interest determined and established by Exhibit Number 6, to the Declaration of Condominium at 12:00 noon on the first Saturday in the year 2021.

2. "Unit Week," means a period of ownership in a Unit committed to Interval Ownership which shall consist of not less than seven days.

"Unit Weeks" are computed as follows:

Unit Week No. 1, is the seven (7) days commencing on the first Saturday in each year. Unit Week No. 2, is the seven (7) days succeeding. Additional Weeks up to and including Unit Week No. 51, are computed in a like manner. Unit Week No. 52, contains the seven (7) days succeeding the end of Unit Week No. 51, without regard to the month or year plus any excess days not otherwise assigned. Unit Weeks run from noon on the first Saturday of the period to noon on the last Saturday of the period.

3. A "Unit Committed to Interval Ownership," shall be any Unit sold under a plan of Interval Ownership.

II.

NAME

The name by which this Condominium is to be identified shall be "Seawatch On-The-Beach, a Condominium."

III.

COMMITTING A UNIT TO INTERVAL OWNERSHIP

TIME SHARE ESTATES AS DEFINED IN SECTION 718.103(19), FLORIDA STATUTES, WILL BE CREATED WITH RESPECT TO UNITS IN THIS CONDOMINIUM.

A Unit shall become a Unit committed to Interval Ownership upon the recording of the first deed in said Unit, conveying Unit Weeks by the Developer. No Unit may be committed to Interval Ownership by any person, or other entity other than the Developer.

A Unit will no longer be committed to Interval Ownership any time all Unit Weeks are owned by the same legal entity. Notwithstanding the above, the Developer may assign its right to commit Units to Interval Ownership to any other entity to which it conveys substantially all Units which it owns in the Condominium Property.

There are forty-two (42) Units in this Condominium, each of which may contain fifty-two (52) Unit Weeks resulting in a maximum of two thousand one hundred eighty-four (2,184) Unit Weeks in the Condominium.

IV.

IDENTIFICATION OF UNITS

The Condominium Property consists essentially of all Units and other improvements as set forth in Exhibit No. 1, attached hereto and for purpose of identification, all Units located on said Condominium Property are given identifying numbers and are delineated on the Survey Exhibits, collectively identified as "Exhibit No. 1", hereto attached and made a part of this Declaration. No Unit bears the same identifying number as does any other Unit. The aforesaid identifying number as to the Unit is also the identifying number as to the Condominium Parcel. The said Exhibit No. 1, also contains a survey of the land, graphic description of the improvements, and a plot plan and, together with this Declaration, they are in sufficient detail to identify the location, dimensions and size of the Common Elements and of each Unit, as evidenced by the Certificate of the Registered Land Surveyor hereto attached. The legend and notes contained within the said Exhibit are incorporated herein and made a part hereof by reference.

V.

IDENTIFICATION OF UNITS COMMITTED TO
INTERVAL OWNERSHIP

Wherever the term "Unit Owner" or "Unit Owners" is used anywhere within the context of this Declaration or any Amendment hereto, it shall be construed to include all Owners of Unit Weeks within any Unit committed to Interval Ownership as one Unit Owner. The respective interests of each Owner of Unit Weeks within such Unit committed to Interval Ownership with respect to each other shall be delineated on Exhibit No. 6, which is annexed to this Declaration and made a part hereof.

VI.

OWNERSHIP OF COMMON ELEMENTS

Each of the Unit Owners of the Condominium shall own an undivided interest in the Common Elements and Limited Common Elements, and the undivided interest, stated as percentages of such ownership in the said Common Elements and Limited Common Elements, as set forth on Exhibit No. 5, which is annexed to this Declaration and made a part hereof.

The fee title to each Condominium Parcel shall include both the Condominium Unit and the above respective undivided interest in the Common Elements, said undivided interest in the Common Elements to be deemed to be conveyed or encumbered with its respective Condominium Unit. Any attempt to separate the fee title to a Condominium Unit from the undivided interest in the Common Elements appurtenant to each Unit shall be null and void. The term "Common Elements" when used throughout this Declaration, shall mean both Common Elements and Limited Common Elements unless the context otherwise specifically requires.

VII.

VOTING RIGHTS

There shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Association and such person shall be known (and is hereinafter referred to), as the "Voting Member". If a Unit is owned by more than one person, the Owners of said Unit shall designate one of them as the Voting Member, or in the case of a Corporate Unit Owner, an officer or employee thereof shall be the Voting Member. The designation of the Voting Member shall be made as provided by and subject to the provisions and restrictions set forth in the By-Laws of the Association.

Each Owner or group of Owners shall be entitled to one vote for each Unit owned. The vote of a Condominium Unit is not divisible.

Notwithstanding the above, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to vote at meetings of the Association and shall be entitled to one fiftieth (1/50th) vote for each Unit Week owned.

VIII.

COMMON EXPENSE AND COMMON SURPLUS

The common expenses of the Condominium shall be shared by the Unit Owners, as specified and set forth in Exhibit No. 5. Any common surplus of the Association shall be owned by each of the Unit Owners in the same percentage specified for sharing common expense.

IX.

MAINTENANCE FEE FOR UNITS
COMMITTED TO INTERVAL OWNERSHIP

All Owners of Unit Weeks in Units committed to Interval Ownership shall pay a "maintenance fee". The maintenance fee shall include the following applicable items:

The Unit's share of common expenses, as set forth in Paragraph VIII, above;

Repair and upkeep of the Unit for normal wear and tear (example - repainting interior walls);

Repair and replacement of furniture, fixtures, appliances, carpeting and utensils;

Casualty and/or liability insurance on the Unit;

Utilities for the subject Unit;

Personal property, real estate, and any other applicable taxes not billed directly to the Owners of the Unit Weeks in the Unit;

Any other expenses incurred in the normal operations and maintenance of the Unit which cannot be attributed to a particular Unit Week Owner.

The maintenance fee shall be prorated among all Owners of Unit Weeks in a specific Unit by applying a fraction, the numerator of which is the number of Unit Weeks owned by a specific Owner, the denominator of which is fifty (50), to the total of all such expenses. The foregoing shall not apply to any Unit Week conveyed to the Association.

Notwithstanding any other provision of Article IX, the Board of Directors may at their option, make a determination to exclude from the maintenance fee all or part of the personal property, real estate, and any other applicable taxes not billed directly to the Owners of the Unit Weeks in any Unit committed to Interval Ownership. In the event the Board of Directors makes such a determination, then the Owners of Unit Weeks shall be separately assessed for said taxes based upon the formula provided for herein for the proration of the maintenance fee.

X.

MAINTENANCE WEEKS IN UNITS
COMMITTED TO INTERVAL OWNERSHIP

Upon conveying forty (40) Unit Weeks in any Unit committed to Interval Ownership, or one (1) year from the date of the first conveyance under Interval Ownership in any Unit committed to Interval Ownership, whichever comes first, the Developer agrees to convey and the Association agrees to accept two Unit Weeks to be used for maintenance purposes. The Developer shall have the right to choose the Unit Weeks to be so conveyed. In the event any one person, or other legal entity, becomes holder of record title to all Unit Weeks in any one Unit, that person, or other legal entity, may cause the Association to convey said Unit Weeks conveyed to the Association to it by notifying the Association, in writing, of its desire that said Unit cease being a Unit committed to Interval Ownership. The Association shall execute the necessary instruments to complete said conveyance no later than sixty (60) days after notice. All expenses of said conveyance, including state stamps and recording fees, shall be borne by the person, or other legal entity, desiring such conveyance.

XI.

METHOD OF AMENDMENT OF DECLARATION

This Declaration may be amended at any regular or special meeting of the Unit Owners, called and convened in accordance with the By-Laws, by the affirmative vote of Voting Members casting not less than fifty-one percent (51%) of the total vote of the members of the Association.

All Amendments shall be recorded and certified as required by the Condominium Act. Subject to the provisions of Article VIII, no Amendment shall change any Condominium Parcel, nor a Condominium Unit's proportionate share of the common expenses or common surplus, nor the voting rights appurtenant to any Unit, unless the record Owner(s) thereof, and all record Owners of mortgages or other voluntarily placed liens thereon, shall join in the execution of the Amendment. No Amendment shall be passed which shall impair or prejudice the rights and priorities of any mortgages or change the provisions of this Declaration with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record, nor shall the provisions of Article XV, of this Declaration be changed without the written approval of all Institutional Mortgagees of record.

No Amendment to this Declaration, or the exhibits thereto, shall change the rights and privileges of the Developer without the Developer's written approval.

Notwithstanding the foregoing paragraphs of this Article XI:

A. The Developer reserves the right to change the interior design and arrangement of all Units and to alter the boundaries between Units, as long as the Developer owns the Units so altered; however, no such change shall increase the number of Units nor alter the boundaries of the Common Elements, except the party wall between any Condominium Units, without Amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in Units, as provided in this paragraph, such changes shall be reflected by the Amendment of this Declaration with a Survey attached, reflecting such authorized alteration of Units, and said Amendment need only be executed and acknowledged by the Developer and any holders of Institutional Mortgages encumbering the said altered Units and the consent of the Unit Owners, the Association, the Owner and holder of any lien encumbering any other Condominium Unit or Unit Week, or any others, shall not be required. The Survey shall be certified in the manner required by the Condominium Act.

B. The Developer, so long as it owns more than ten percent (10%) of the Condominium Units or Unit Weeks in the Condominium, reserves the right at any time to amend the Declaration, as may be required by any lending institution or public body, or in such manner as the Developer may determine to be necessary in its sole discretion provided that such Amendment shall not change the rights and privileges of Institutional Mortgagees, increase the proportion of common expenses nor decrease the Ownership of Common Elements borne by the Unit Owners, change a Unit Owner's voting rights or change the size of the Common Elements to the prejudice of the Unit Owners. Said Amendment need only be executed and acknowledged by the Developer and the consent of the Unit Owners, the Association, the Owner and holder of any lien encumbering a Condominium Unit or Unit Week in this Condominium, or any others shall not be required.

XII.

BY-LAWS

The operation of the Condominium's Property shall be governed by the By-Laws of the Association, which are set forth in a document which is annexed to this Declaration, marked Exhibit No. 2, and made a part hereof.

No modification of or Amendment to the By-Laws of said Association shall be valid unless set forth in or annexed to a duly recorded Amendment to this Declaration. The By-Laws may be amended in the manner provided for therein, but no Amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel, or which would change the provision of the By-Laws with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record. No Amendment shall change the rights and privileges of the Developer without the Developer's written approval. Any Amendment to the By-Laws, as provided herein, shall be executed by the parties as required in this Article and in Article XI, above, and said Amendment shall be recorded in the Public Records of Lee County, Florida.

XIII.

THE OPERATING ENTITY

The operating entity of the Condominium shall be the Association, which has been organized pursuant to the Condominium Act. The said Association shall have all of the powers and duties set forth in the Condominium Act, as well as, all of the powers and duties granted to or imposed upon it by this Declaration, the By-Laws of the Association and its Articles of Incorporation, a copy of said Articles of Incorporation being annexed hereto as Exhibit No. 3, and made a part hereof, and all of the powers and duties necessary to operate the Condominium, as set forth in this Declaration and the By-Laws, and as they may be amended from time to time.

Every Owner of a Condominium Parcel, whether he has acquired his Ownership by purchase, by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the By-Laws and Articles of Incorporation of the said Association, the provisions of this Declaration and the Management Agreement.

XIV.

ASSESSMENTS

The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the common expenses of the Condominium Property, such other assessments as are specifically provided for in this Declaration and Exhibits attached hereto and the maintenance fee. The procedure for the determination of all such assessments and the maintenance fee shall be as set forth in the By-Laws of the Association and this Declaration, and the Exhibits attached hereto.

The common expenses shall be assessed against each Condominium Parcel Owner as provided for in Article VIII, of this Declaration.

Assessments, installments, maintenance fees and holdover charges as defined in Article XVI, E, that are unpaid for over ten (10) days after due date shall bear interest at the maximum rate permitted by law, from due date until paid, and at the sole discretion of the Board of Directors, a late charge of \$25.00, or such amount as is specified in the Rules and Regulations adopted by the Board of Directors, shall be due and payable. Regular assessments shall be due and payable monthly on the first of each month and monthly bills for same shall not be mailed or delivered to Unit Owners. Maintenance fees for Units committed to Interval Ownership shall be due and payable on the first day of January, April, July and October in advance, unless otherwise ordered by the Board of Directors.

The Association shall have a lien on each Condominium Parcel for unpaid assessments, maintenance fees and holdover charges together with interest thereon, against the Unit Owner of such Condominium Parcel, together with a lien on all tangible personal property located within said Unit, except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record. Reasonable attorneys' fees incurred by the Association incident to the collection of such assessments, maintenance fees and holdover charges or the enforcement of such lien, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association, in order to preserve and protect its lien, shall be payable by the Unit Owner and secured by such lien. The Board of Directors, may take such action as it deems necessary to collect assessments, maintenance fees and holdover charges by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in its best interests. Said lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association, shall be entitled to bid at any sale held pursuant to a suit to foreclose on assessment, maintenance fee or holdover charges lien, and to apply as a cash credit against its bid, all sums due, as provided herein, covered by the lien enforced. In case of such foreclosure the Unit Owner shall be required to pay a reasonable rental for the Condominium Parcel for the period of time said Parcel is occupied by the Unit Owner or anyone by, through or under said Unit Owner, and Plaintiff, in such foreclosure, shall be entitled to the appointment of a Receiver to collect same from the Unit Owner and/or Occupant.

In the case of a lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, said lien shall be limited to the Unit Weeks owned by said Owner and shall not encumber the Property, real or personal, of any other Owner of Unit Weeks in said Unit.

Where the Mortgagee of an Institutional First Mortgage of record, or other Purchaser of a Condominium Unit, obtains title to a Condominium Parcel as a result of foreclosure of the Institutional First Mortgage, or when an Institutional First Mortgagee of record accepts a Deed to said Condominium Parcel in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the shares of common expenses, or assessment by the Association pertaining to such Condominium

Parcel, or chargeable to the former Unit Owner of such Parcel, which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of common expenses, or assessments shall be deemed to be common expenses collectible from all of the Unit Owners, including such acquirer, his successors and assigns.

Any person who acquires an interest in a Unit, except through foreclosure of an Institutional First Mortgage of record, or by virtue of an Institutional First Mortgagee accepting a Deed to a Condominium Parcel or Unit Week in lieu of foreclosure, as specifically provided hereinabove including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid assessments, maintenance fees and holdover charges due and owing by the former Unit Owners have been paid. The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments, maintenance fees, or holdover charges to the Developer, or to any Unit Owner or group of Unit Owners, or to any third party.

XV.

INSURANCE PROVISIONS

I. INSURANCE

A. Purchase of Insurance: The Association shall obtain the insurance described herein together with such other insurance as the Association deems necessary in and for the interest of the Association, all Unit Owners and their Mortgagees, as their interests may appear. The premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as part of the common expense. The named insured shall be the Association, individually and as Agent for the Unit Owners, without naming them, and as Agent for their mortgagees.

Provision shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee or upon the written request of the Developer with such party as the Developer shall designate. All Institutional Mortgagees who own and hold a first mortgage on a Condominium Unit or Unit Week shall have a right to receive a certified copy of the insurance policy(s) which are obtained pursuant to this Article XV, and the party responsible for obtaining said policy(s) shall (a) cause certified copies of said policy(s) to be delivered to all Institutional Mortgagees upon receipt of same, (b) cause to be delivered to all Institutional Mortgagees, not later than 30 days prior to the expiration of any insurance policy, a certified copy of a binder or certificate of the insurer evidencing the replacement thereof and not later than 15 days prior to the expiration of such policy(s), a certified copy of the new policy(s), and (c) cause to be delivered to all Institutional Mortgagees, evidence as to the payment of all premiums due on insurance policies obtained, pursuant to this Article XV. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

B. Coverage:

(1) Casualty. All buildings and improvements upon the Condominium Property shall be insured in an amount which shall be not less than eighty (80%) percent of the full insurable value (actual replacement value), and all personal property included in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors of the Association in accordance with generally accepted insurance practices. Such coverage shall afford protection against:

- (a) Loss or damage by fire, flood, lightning and such other risks as are included in coverage of the type known as the broad form of supplemental or extended coverage; and
- (b) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Property, including but not limited to, vandalism and malicious mischief.

(2) Public Liability including personal injury and property damage, insurance applicable to the Condominium Property in such amounts as shall be determined annually by the Board of Directors of the Association.

(3) Insurance On Units Committed to Interval Ownership. The Board of Directors of the Association, shall obtain casualty and liability insurance, as needed, on all Units committed to Interval Ownership, in such amounts and with such coverage as shall be determined annually by the Board of Directors which shall include, but not be limited to additional living expense coverage. The named insured shall be the Association, individually and as agent for all of the Unit Week Owners in each such Unit, without naming them, and as agent for their mortgagees. The premiums shall be a part of the maintenance fee. All losses thereunder shall be payable to the Insurance Trustee hereinafter designated. All such proceeds shall be used for the purpose of repair or replacement of any loss, or in the event such loss is not to be repaired or replaced, as determined elsewhere, to be divided among all Owners of Unit Weeks in such Unit in accordance with Exhibit No. 6, to the Declaration. Any deficit or overage in such proceeds, after repair or replacement, shall be divided among all such Owners of Unit Weeks in that Unit in accordance with Exhibit No. 6, to the Declaration. Deficits shall be treated as part of the maintenance fee next due.

(4) Workmen's Compensation policy to meet the requirements of law.

(5) Such Other Insurance as the Board of Directors of the Association shall determine from time to time desirable.

C. Premiums: Premiums upon insurance policies other than insurance policies on Units committed to Interval Ownership, as provided for herein, purchased by the Association, shall be paid by the Association as a common expense.

D. Insurance Trustee; Shares of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the insurance trustee, which shall be designated by the Board of Directors and which shall be any bank or trust company in Florida with trust powers. The insurance trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

(1) 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.

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

- (a) When the Building is to be Restored - For the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.
- (b) When the Building is Not to be Restored - An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(3) Mortgagees. In the event a mortgage endorsement has been issued as to 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, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

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

(1) Expense of the Trust. All expenses of the insurance trust shall be first paid or provision made therefor.

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

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed 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 such mortgagee.

(4) Certificate. In making distribution to Unit Owners and their mortgagees, the insurance trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their respective shares of the distribution.

F. Association as Agent: The Association is hereby irrevocably appointed Agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

G. Notice of Insurance Coverage: 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 will 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.

H. Inspection of Insurance Policy: A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

II. RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. Determination to Reconstruct or Repair: If any part of the Common Elements or any building containing Condominium Units shall be damaged by casualty, the damaged Property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(1) Certificate. The insurance trustee may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged Property is to be reconstructed or repaired.

B. Plans and Specifications: Any reconstruction or repair required by this Article XV, must provide for an equal number of Units if the damaged improvement is a building containing Condominium Units, and shall be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached hereto as Exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association and if the damaged Property is a building containing Condominium Units, such approval shall be by the Owners and Institutional Mortgagees of not less than 50% of the Common Elements, including the Owners and Institutional Mortgagees of all damaged Units, which approval shall not be unreasonably withheld. All reconstruction or repairs shall be in accordance with applicable law, regulation, local

ordinance or the action of a governmental authority having jurisdiction. The Association shall use its best efforts to overcome any prohibition on reconstructing or repairing a damaged improvement including, without limitation, resort to administrative and/or judicial remedies, unless the Association's legal counsel shall have rendered an opinion to the Association that the likelihood of success of such action is remote. If reconstruction or repair of a damaged improvement containing Condominium Units is prohibited, and the Condominium Units contained therein are not tenable, the Condominium will be terminated as elsewhere provided. In the event insurance proceeds are insufficient to cover the expenses of reconstruction, the Board of Directors shall levy a special assessment against the Unit Owners to cover any deficit.

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

D. Estimates of Costs: Immediately after a determination is made to rebuild or repair damage to Property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments: The amount by which an award of insurance proceeds to the insurance trustee is reduced on account of a deductible clause in an insurance policy shall be assessed against all Unit Owners in proportion to their shares in the Common Elements. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners, in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Elements.

F. Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) Association. If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than \$25,000.00, then the sums paid upon such assessments shall be deposited by the Association with the insurance trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(2) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the insurance trustee by the Association from collection of assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

- (a) Association - Lesser Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$25,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors, provided, however, that upon request to the insurance trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.
- (b) Association - Major Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$25,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (c) Unit Owner - The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the insurance trustee to the Unit Owner, or if there is a mortgage endorsement as to such Unit, then to the Unit Owner and mortgagee jointly, who may use such proceeds as they may be advised.
- (d) Surplus - It shall be presumed that the first monies disbursed in payment of costs and reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial Owner which is not in excess of assessments paid by such Owner into the construction fund shall not be made payable to any mortgagee.

- (e) Certificate - Notwithstanding the provisions herein, the insurance trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessments shall be deposited by the Association with the insurance trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Owners. Instead, the insurance trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid; provided, that when a mortgagee is herein required to be named as payee, the insurance trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or a mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

XVI.

USE AND OCCUPANCY

A. Use Restriction: The Owner of a Unit shall occupy and use his Unit as a single family private dwelling for himself and the members of his family, his social guests, lessees, licensees and invitees. Notwithstanding the foregoing, nothing in this Declaration shall be construed to restrict the Developer, or any successor in interest to the Developer, from selling and/or conveying any Unit under a plan of Interval Ownership, or any person, group of persons, corporation, partnership, or other entity, from selling, reconveying, or in any other way, transferring same, at any time under said plan of Interval Ownership.

B. Prohibited Acts: The Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will increase the rate of insurance in the Condominium Property, or which will obstruct or interfere with the rights of other Unit Owners, or annoy them by unreasonable noises, or otherwise, nor shall the Unit Owners commit or permit any nuisance, immoral or illegal acts in or about the Condominium Property.

C. Restrictions on Alterations: The Owner of a Unit shall not cause anything to be affixed or attached to, hung, displayed or placed, on the exterior walls, doors or windows of the Units nor the Limited Common Elements or the Common Elements,

nor shall they cause any type of ground coverage to be installed nor shall they grow any type of plant, shrubbery, flower, vine or grass outside their Unit, nor shall they cause awnings or storm shutters, screens, enclosures and the like to be affixed or attached to any Units, Limited Common Elements or Common Elements; nor shall they place any furniture or equipment outside their Unit except with the prior written consent of the Board of Directors, and further, when approved, subject to the Rules and Regulations adopted by the Board of Directors. No clothes line or similar device shall be allowed on any portion of the Condominium Property, nor shall clothes be hung anywhere except where designated by the Board of Directors of the Association.

D. Common Elements: No person shall use the Common Elements and Limited Common Elements or any part thereof, or a Condominium Unit, or the Condominium Property, or any part thereof, in any manner contrary to or not in accordance with such Rules and Regulations pertaining thereto, as from time to time promulgated by the Board of Directors.

E. Holdover Interval Owners: In the event any Owner of a Unit Week in a Unit committed to Interval Ownership fails to vacate his Unit at the expiration of his period of Ownership each year, or at such earlier time as may be fixed by the Rules and Regulations adopted by the Board of Directors from time to time, he shall be deemed a "Holdover Owner". It shall be the responsibility of the Association to take such steps as may be necessary to remove such Holdover Owner from the Unit, and to assist the Owner of any subsequent Unit Week, who may be affected by the Holdover Owner's failure to vacate, to find alternate accommodations during such holdover period.

In addition to such other remedies as may be available to it, the Association shall secure, at its expense, alternate accommodations for any Owner who may not occupy his Unit due to the failure to vacate of any Holdover Owner. Such accommodations shall be as near in value to the Owner's own Unit as possible. The Holdover Owner shall be responsible for the following "hold-over charges": the cost of such alternate accommodations; any other costs incurred due to this failure to vacate; and an administrative fee of one hundred (\$100.00) dollars, per day, or such administrative fee which is specified in the Rules and Regulations adopted by the Board of Directors during his period of holding over. In the event it is necessary that the Association contract for a period greater than the actual period of holding over, in order to secure alternate accommodations as set forth above, the entire period shall be the responsibility of the Holdover Owner, although the administrative fee shall cease upon actual vacating by the Holdover Owner.

The Association shall submit a bill to the Holdover Owner in accordance with this paragraph for the holdover charges. In the event the Holdover Owner fails to pay same within ten (10) days of the date of same, a lien shall be filed against said Holdover Owner's Unit Weeks in accordance with the provisions of Article XIV, hereof.

The above provisions of Article XVI, E, shall not abridge the Association's right to take such other action as is provided by law.

XVII.

MAINTENANCE AND ALTERATIONS

A. The Board of Directors of the Association may enter into a Contract with any firm, person or corporation, or may join with other Condominium Associations and entities in contracting for the maintenance and repair of the Condominium Property and other type properties, and may contract for or may join with other Condominium Associations in contracting for the management of the Condominium Property and other type properties. The Contractor or Manager may be authorized to determine the budget, make assessments for common expenses and maintenance fees and collect assessments and maintenance fees subject to the approval of the Board of Directors as provided by this Declaration, By-Laws, and Exhibits to the Declaration.

B. Each Owner of a Unit not committed to Interval Ownership agrees as follows:

(1) To maintain in good condition and repair his Unit and all interior surfaces within or surrounding his Unit (such as the surfaces of the walls, ceilings, floors) whether or not a part of the Unit or Common Elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit.

(2) Not to make or cause to be made any structural addition, alteration, decoration, repair, replacement or change of the Common Elements or to any outside or exterior portion of the building whether within a Unit or part of the Limited Common Elements without the prior written consent of the Board of Directors of the Association.

C. Each Owner of Unit Weeks in a Unit committed to Interval Ownership agrees:

(1) To pay his proportionate share of the cost of the maintenance and repair of all interior and exterior components of said Unit, the cost of maintenance, repair and replacement of all appliances, furniture, carpeting, fixtures, equipment, utensils, and other personal property within said Unit, and such other costs of repair, maintenance, upkeep and operation of the Unit as is necessary to the continued enjoyment of said Unit by all said Owners of Unit Weeks therein. The Association shall be responsible for the maintenance and repair of all of the items described herein.

(2) Not to make, cause, or allow to be made, any repairs, modifications, alterations, or replacements to the Common Elements, Limited Common Elements, outside or exterior portion of the buildings whether within a Unit or part of the Limited Common Elements or Common Elements, exterior or interior of his Unit, or of the furnishings, appliances, personal property, or decor thereof, without the prior written consent of the Board of Directors of the Association, and all other Owners of Unit Weeks therein.

(3) Expenses of repairs or replacements to the Unit or its components, furnishings, carpeting, appliances, or other property, real, personal, or mixed, occasioned by the specific use or abuse of any Owner of Unit Weeks in any Unit, or any licensee or tenant of said Owner, shall be borne in their entirety by said Owner.

(4) The Association, shall determine the interior color scheme, decor and furnishings, of each such Unit, as well as the proper time for redecorating and replacements thereof.

D. All Owners of Units, including Owners of Unit Weeks in Units committed to Interval Ownership, agree as follows:

(1) To allow the Board of Directors, or the agents or employees of any Management Firm or the Association, to enter into any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within the Units, Limited Common Elements or the Common Elements, or to determine in case of emergency, circumstances threatening Units, Limited Common Elements or the Common Elements, or to determine compliance with the provisions of this Declaration and the By-Laws of the Association.

(2) To show no signs, advertisements or Notices of any type on the Common Elements, Limited Common Elements, or his Unit, and to erect no exterior antenna or aerials, except as consented to by the Board of Directors of the Association.

E. In the event the Owner of a Unit fails to maintain the said Unit and Limited Common Elements, as required herein, or makes any alterations or additions without the required written consent, or otherwise violates or threatens to violate the provisions hereof, the Association, shall have the right to proceed in a Court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof and in addition thereto, the Association shall have the right to levy an assessment against the Owner of a Unit, and the Unit, for such necessary sums to remove any unauthorized addition or alteration and to restore the Property to good condition and repair. Where said failure, alteration, addition, or other violation is attributable to an Owner of Unit Weeks in a Unit committed to Interval Ownership, any such levy of an assessment shall be limited to the Unit Weeks owned by said Owner of Unit Weeks and shall be of no force and effect as to any other Owner of Unit Weeks in said Unit.

Said assessment shall have the same force and effect as all other special assessments. The Association, shall have the further right to have its employees or agents, or any subcontractors appointed by it, enter a Unit at all reasonable times to do such work as is deemed necessary by the Board of Directors of the Association, to enforce compliance with the provisions hereof.

F. The Association, shall determine the exterior color scheme of the buildings and all exteriors, and interior color scheme of the Common Elements, and shall be responsible for the maintenance thereof, and no Owner shall paint an exterior wall, door, window, or any exterior surface, or replace anything thereon or affixed thereto, without the written consent of the Board of Directors of the Association.

G. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements and all Property not required to be maintained, repaired and/or replaced by the Unit Owners. Notwithstanding the Unit Owner's duty of maintenance, repair, replacement and the other responsibilities as to his Unit, as is provided in this Declaration and Exhibits attached thereto, the Association, may enter into an agreement

with such firms or companies as it may determine to provide certain services and/or maintenance for and on behalf of the Unit Owners whereby maintenance and service are provided on a regularly scheduled basis for air conditioning maintenance and service and appurtenances thereto, exterminating services and other types of maintenance and services as the Association deems advisable and for such period of time and on such basis as it determines. Said agreements shall be on behalf of all Unit Owners and the assessments due from each Unit Owner for common expenses shall be increased by such sum as the Association deems fair and equitable under the circumstances in relation to the monthly charge for said maintenance or service. Each Unit Owner shall be deemed a party to said agreement with the same force and effect as though said Unit Owner had executed said agreement and it is understood and agreed that the Association shall execute said agreements as the agent for the Unit Owners. The aforesaid assessment shall be deemed to be an assessment under the provisions of Article XIV, of this Declaration.

XVIII.

LIMITED COMMON ELEMENTS

Those areas reserved for the use of certain Unit Owners or a certain Unit Owner, to the exclusion of other Unit Owners, are designated as "Limited Common Elements", and are shown and located on the Surveys annexed hereto as "Exhibit No. 1". 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. The Limited Common Elements are comprised of the private porches appurtenant to the Units as described in Exhibit No. 1.

XIX.

TERMINATION

A. If fifty-one (51%) percent of the Unit Owners and holders of all liens and mortgages affecting any of the Condominium Parcels execute and duly record an instrument terminating the Condominium Property, or if there exists a prohibition on the reconstruction or repair of a damaged improvement containing Condominium Units which are not tenantable, as required by Article XV, said Property shall be deemed to be subject to termination and thereafter owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owner shall then become the percentage of the undivided interest previously owned by such Owner in the Common Elements upon termination of the Condominium.

B. It is understood that in the year 2021, the Purchasers of Units committed to Interval Ownership shall become tenants in common. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days, prior to the actual date of such conversion to tenancy in common, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, a vote shall be taken to decide the disposition of the Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, the Owners, by a majority vote, may vote to continue their intervals, in which case the restrictive covenants set forth below will be adopted as covenants running with the land for a period of ten (10) years. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days, prior to the actual expiration of said ten year period, call a meeting of all Owners of Unit Weeks in Units

committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. The Owners may then vote to continue the intervals for an additional 10 year period. This process shall be repeated as the end of each successive 10 year period approaches. Should less than a majority of the Owners vote to continue the intervals at any such meeting, then the Board of Directors of the Association shall take the necessary steps to discontinue the Interval Ownership program at the Condominium, at which time the Board of Directors of the Association and each Owner of a Unit Week in a Unit committed to Interval Ownership shall have the right to take such action as is permitted by this Declaration and laws of the State of Florida. This shall include, but not be limited to, filing suit in a court of competent jurisdiction in Lee County, Florida for partition of the Units, if permitted by applicable law.

In the event the Owners vote to continue their Unit Weeks as provided above, then each Owner shall have the exclusive right to occupy his Unit, and as between Owners to use and enjoy the Common Elements of the Condominium, and the rights and easements appurtenant to his Unit during his Unit Weeks (and, in the case of Developer, during all Unit Weeks not theretofore conveyed, and to authorize others so to do, together with the non-exclusive right in common with all other Owners, but only when acting through the Association), to maintain and repair the Units during maintenance weeks. No Owner shall occupy his Unit, or exercise any other rights of Ownership with respect to his Unit other than the rights herein provided to him, during any other Unit Weeks unless expressly so authorized by the Owner entitled to occupy the Unit during such Unit Weeks or during any maintenance week except when acting through the Association. Each Owner shall keep his Unit and all furnishings in good condition and repair during his Unit Weeks, vacate the Unit at the expiration of his Unit Weeks, remove all persons and property therefrom excluding only furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Association.

Subject to the laws of the State of Florida, no Owner or other person or entity acquiring any right, title or interest in a Unit shall seek or obtain through any legal procedures, judicial partition of the Unit or sale of the Unit in lieu of partition at any date prior to the expiration of each successive ten (10) year period voted by a majority of the Owners. If, however, any Unit Weeks shall be owned by two or more persons as tenants in common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Unit Weeks in lieu of partition as between such co-tenants or joint tenants.

XX.

USE OF COMMON ELEMENTS AND RECREATIONAL FACILITIES

The Association, its members, the Developer and its successors and assigns and all parties who own an interest in and to the recreational facilities agree that they shall not have any right to bring any action for partition or division of the real Property that constitutes said recreational facilities and said parties do hereby waive said rights of partition or division of said recreational facilities. The initial Rules and Regulations, and all Amendments thereof and revision thereof pertaining to use of the Common Elements and recreational facilities shall be posted in conspicuous places on the Common Elements or recreational

facilities. The Unit Owners hereby covenant and agree to be bound by all of such Rules and Regulations and said parties shall obey same and be responsible for their being obeyed by the said Unit Owners, their family, guests, invitees, lessees and servants. Should a Unit Owner fail to pay an assessment for common expenses or his maintenance fee, as required under the terms of this Declaration of Condominium for the period of time specified herein whereby said assessment or maintenance fee becomes delinquent, the Association may deny the Unit Owner and/or the authorized user of the recreational facilities the use and enjoyment of same until such time as all assessments or maintenance fees are paid. The Association shall further have the right in its sole discretion to suspend any Unit Owner and/or authorized user of said recreational facilities from the use of same for a period not to exceed thirty (30) days for any infraction of the promulgated Rules and Regulations pertaining to said recreational facilities, and in the case of a Unit committed to Interval Ownership for a period not to exceed seven (7) days. Should the Unit Owner or the authorized user of said recreational facilities rights to use same be suspended, there shall be no reduction in the assessments or maintenance fees due and payable by said Unit Owner or authorized user. In the case of a Condominium Unit committed to Interval Ownership, all sanctions, as outlined above, shall be limited to the delinquent Unit Week Owner and shall be of no force and effect against non-delinquent Owners of Unit Weeks in such Condominium Unit committed to Interval Ownership.

Any person who is the Owner of a Condominium Parcel, together with members of his family, social guest, lessees, invitees and licensees, may use the recreational facilities. Where a corporation is a Parcel Owner, the use of said recreational facilities shall be limited at any one time to such Officer, Director or employee of said corporation who is in actual residence or possession of the Unit and such individual shall be deemed to be the Condominium Parcel Owner for the purposes of this paragraph. Where a party owns one Condominium Unit and leases same, the lessee shall be entitled to the use of the recreational facilities and said lessee's rights thereto shall be the same as though said lessee were the Unit Owner and during the term of said lease, the Unit Owner and his family shall not be entitled to the use of the recreational facilities. Use of the recreational facilities by Owners of Unit Weeks in Units committed to Interval Ownership, or any other person using the facilities through said Owner, shall be limited to the period of Ownership each year of said Owner of Unit Weeks in such Unit.

XXI.

MANAGEMENT AGREEMENT

A. Pursuant to the provisions of Article XVII A, the Association has entered into a Management Agreement, a copy of which is annexed hereto as Exhibit No. 4, and made a part hereof. Each Unit Owner, his heirs, successors and assigns, shall be bound by said Management Agreement for the purposes therein expressed, including, but not limited to:

(1) Adopting, ratifying, confirming and consenting to the execution of said Management Agreement by the Association.

(2) 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 Management Agreement.

(3) Ratifying, confirming and approving each and every provision of said Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.

(4) 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.

(5) It is specifically recognized that some or all of the persons comprising the original Board of Directors of the Association, are or may be stockholders, Officers and Directors of the Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate such Management Agreement, in whole or in part.

(6) The acts of the Board of Directors and Officers of the Association in entering into the Management Agreement be and the same are hereby ratified, approved, confirmed and adopted.

XXII.

MISCELLANEOUS PROVISIONS

A. The Owners of the respective Condominium Units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding their respective Condominium Units, nor shall the Unit Owner be deemed to own pipes, wires, conduits, or other public utility lines running through said respective Condominium Units which are utilized for or serve more than one Condominium Unit, which items are, by these presents, hereby made a part of the Common Elements. Said Unit Owner, however, shall be deemed to own the walls and partitions which are contained in said Unit Owner's Condominium Unit, and shall also be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings, including plaster, paint, wallpaper, etc., however, all load bearing walls are a part of the Common Elements to the unfinished surface of said walls.

B. The Owners of the respective Condominium Units agree that if any portion of a Condominium Unit or Common Element or Limited Common Element encroaches upon another, a valid easement for the encroachment and maintenance of same, so long as it stands, shall and does exist. In the event the Condominium building is partially or totally destroyed and then rebuilt, the Owners of the Condominium Parcels agree that encroachments on parts of the Common Elements or Limited Common Elements or Condominium Units, as afordescribed, due to construction, shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist.

C. No Owner of a Condominium Parcel may exempt himself from liability for his contribution toward the common expenses or, in the case of an Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership, the maintenance fee, by waiver of the use and enjoyment of any of the Common Elements or the recreation facilities or by the abandonment of his Condominium Unit.

D. The Owners of each and every Condominium Parcel shall return the same for the purpose of ad valorem taxes with the Tax Assessor of the County wherein the Condominium is situate, or for such other future legally authorized governmental Officer or authority having jurisdiction over same. Nothing herein shall be

construed, however, as giving to any Unit Owner the right of contribution or any right of adjustment against any other Unit Owner on account of any deviation by the taxing authorities from the valuation herein prescribed, each Unit Owner to pay ad valorem taxes and special assessments as are separately assessed against his Condominium Parcel. Subject to the provisions of Article IX, ad valorem taxes on a Unit committed to Interval Ownership shall be paid by the Association and said taxes shall be collected as part of the maintenance fee in the event the Unit Week Owners are not billed individually for ad valorem taxes.

For this purpose of ad valorem taxation, the interest of the Owner of a "Condominium Parcel" in his "Condominium Unit" and in the "Common Elements", shall be considered a Unit. The value of said Unit shall be equal to the percentage of the value of the entire Condominium, including land and improvements, as has been assigned to said Unit in this Declaration. The total of all of said percentages equals 100% of the value of all of the land and improvements thereon.

E. All provisions of this Declaration and Exhibits attached hereto, and any Amendments thereof, shall be construed as covenants running with the land, and of every part thereof and interest therein, including, but not limited to every Unit and the appurtenances thereto, and every Unit Owner and Occupant of the Condominium Property, or any part thereof, or of any interest therein, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any Amendments thereof.

F. If any of the provisions of this Declaration, or of the By-Laws, the Articles of Incorporation of the Association, the Management Agreement, or of the Condominium Act, or any section, clause, phrase, word, or the application thereof, in any circumstance, is held invalid the validity of the remainder of this Declaration, the By-Laws, Articles of Incorporation and Management Agreement, or the Condominium Act, and of the application of any such provision, action, sentence, clause, phrase or word, in other circumstances, shall not be affected thereby.

G. Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners either personally or by mail, addressed to such Unit Owners at their place of residence on file with the Condominium Association from time to time. Proof of such mailing or personal delivery by the Association or any Management Firm shall be given by the Affidavit of the person mailing or personally delivering said notices. Notices to the Association shall be delivered by mail to the Secretary of the Association, or the President of the Association, or to any member of the Board of Directors of the Association. The change of the mailing address of any party as specified herein shall not require an Amendment to this Declaration.

Notices to the Developer shall be delivered by mail at: HI-AT Development, Inc., 6535 McGregor Boulevard #12, Fort Myers, Florida 33907.

Notices to the Management Firm shall be delivered by mail at: Mariner Property Management, Inc., 2353 Periwinkle Way, Suite 103, Sanibel, Florida 33957.

All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice, duly receipted for. Notices required to be given the personal representatives of a deceased Owner or devisee, when there is no personal representative, may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the estate of such deceased Owner is being administered. The change of the mailing address of any party, as specified herein, shall not require an Amendment to the Declaration.

H. The Developer shall have the right so long as one (1) Condominium Unit or Unit Week is being held by the Developer for sale in the ordinary course of business to use such portions of the Common Elements as the Developer shall determine in its sole discretion for the purpose of aiding in the sale of Condominium Units and/or Unit Weeks including the right to use portions of the Condominium Property for parking for prospective purchasers and such other parties as Developer determines. The foregoing right shall mean and include the right to display and erect signs, billboards and placards and store, keep and exhibit same and distribute audio and visual promotional materials upon the Common Elements.

I. Each Unit Owner and the Association shall be governed by and shall comply with this Declaration and the By-Laws attached hereto, and the Condominium Act of the State of Florida. Failure to do so shall entitle the Association or any Unit Owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a Unit Owner or the Association in a proper case by or against one or more Unit Owners, and the prevailing party shall be entitled to receive reasonable attorneys' fees. Such relief shall not be exclusive of other remedies provided by law.

J. The Board of Directors of the Condominium Association, when authorized by a vote of the majority of the total vote of the members of the Association, may, individually, or together with other Condominium Associations and others, purchase and/or acquire and enter into agreements, from time to time, whereby it acquires leaseholds, memberships, and other possessory or use interests in lands or facilities, including, but not limited to country clubs, golf clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the enjoyment, recreation and other use or benefit of the Unit Owners. The expense of Ownership, rental fees, membership fees, operations, replacements and other undertakings in connection therewith shall be included in the common expense assessment.

K. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and plural shall include the singular. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.

L. The captions used in this Declaration of Condominium and Exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or Exhibits hereto annexed.

M. Where an Institutional First Mortgage, by some circumstance, fails to be a First Mortgage, but it is evident that it is intended to be a First Mortgage, it shall, nevertheless, for the purpose of this Declaration and Exhibits annexed, be deemed to be an Institutional First Mortgage.

N. Subject to the provisions of Section 718.203 of the Condominium Act, the Developer specifically disclaims any intent to have made any warranty or representation in connection with the Property or the Condominium documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein unless otherwise stated. Maintenance fees, common expenses, taxes or other charges are estimates only and no warranty, guaranty or representation is made or intended, nor may one be relied upon.

O. Condominium Association, by its execution of this Declaration of Condominium, approves the foregoing and 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 Unit or Unit Week, and other parties by virtue of their occupancy of Units hereby approve the foregoing and all of the terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto.

P. No Condominium Parcel Owner shall bring, or have any right to bring, any action for partition or division of the Condominium Property, nor shall any Owner of Unit Weeks within any Condominium Unit committed to Interval Ownership have any right to bring any such action with reference to other Owners of Unit Weeks in such Condominium Unit, it permitted by law, until such time as is provided for in Article XIX.

The Interval Conveyance consists of an estate for years, together with a remainder over as tenants in common with all other Purchasers of Unit Weeks, in each such Condominium Unit as set forth in the Deed of Conveyance. No Owner of Unit Weeks in a Unit committed to Interval Ownership, shall have the right to separate the estate for years from the remainder interest.

Q. The real Property submitted to Condominium Ownership herewith is subject to conditions, limitations, restrictions, reservations, all matters of record and the rights of the United States of America, the State of Florida or any governmental authority or 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, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, utility service, and drainage now existing or hereafter granted by the Developer for the benefit of such persons as the Developer designates, and the said Developer shall have the right to accept and grant such easements and designate the beneficiaries thereof for such time as the Developer determines in its sole discretion, and thereafter,

the Association shall be empowered to accept and grant such easements on behalf of its members. During the period of time that the Developer has the right to accept and grant the foregoing easements, the Developer shall have the right to move, substitute and vacate said easements, and the consent and approval of the Association, its members, or anyone else, shall not be required. The right to accept and grant the foregoing easements shall be subject to said easements not structurally weakening the buildings and improvements upon the Condominium Property, nor unreasonably interfering with the enjoyment of the Condominium Property by the Association's members.

R. In order to insure the Condominium Property with adequate and uniform water service and sewerage disposal service, the Developer shall and hereby reserves the exclusive right to contract for the servicing of said Condominium and the Unit Owners therein with said services. Pursuant to the foregoing, the Developer has, will or may contract with, a utility company which may include a municipal or governmental agency or authority for the furnishing of said services and the Association and Unit Owners agree to pay the charges therefor pursuant to and to comply with all of the terms and conditions of said utility Agreement.

S. Notwithstanding the fact that the present provisions of the Condominium Act of the State of Florida are incorporated by reference and included herein thereby, the provisions of this Declaration and Exhibits attached hereto shall be paramount to the Condominium Act as to those provisions where permissive variances are permitted; otherwise, the provisions of said Condominium Act shall prevail and shall be deemed incorporated therein.

T. Leasing or renting of a Condominium Unit or Unit Weeks within a Condominium Unit committed to Interval Ownership is permitted.

U. Owners of Units shall have as an appurtenance thereto a perpetual easement for ingress and egress to and from their Units over stairs, terraces, balconies, walks and other Common Elements.

V. The Owner of a Unit shall have an easement for ingress and egress, over such streets, walks and other rights-of-way serving the Units within the Condominium as a part of the "Common Elements" as may be necessary to provide reasonable access to said public ways, and such easement shall extend to the invitees and licensees of said Unit Owner. In the event that any of said easements for ingress and egress shall be encumbered by any leasehold or lien, other than those on the Condominium Parcels, such leaseholds or liens shall hereby be subordinate to the use rights of any Condominium Unit Owner or Owners whose Condominium Parcel is not also encumbered by said lien or leasehold.

XXIII.

DEVELOPER'S RIGHT TO ADD ADDITIONAL RECREATIONAL FACILITIES

The Developer reserves the right, but not the obligation, until December 31, 1985, to convey to the Association one or more Parcels of real property on which the Developer has constructed additional recreational facilities for the Condominium, hereinafter referred to as the "Recreational Parcel". The Developer shall have the right to determine the type or types of recreational facilities to be provided.

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1583 483

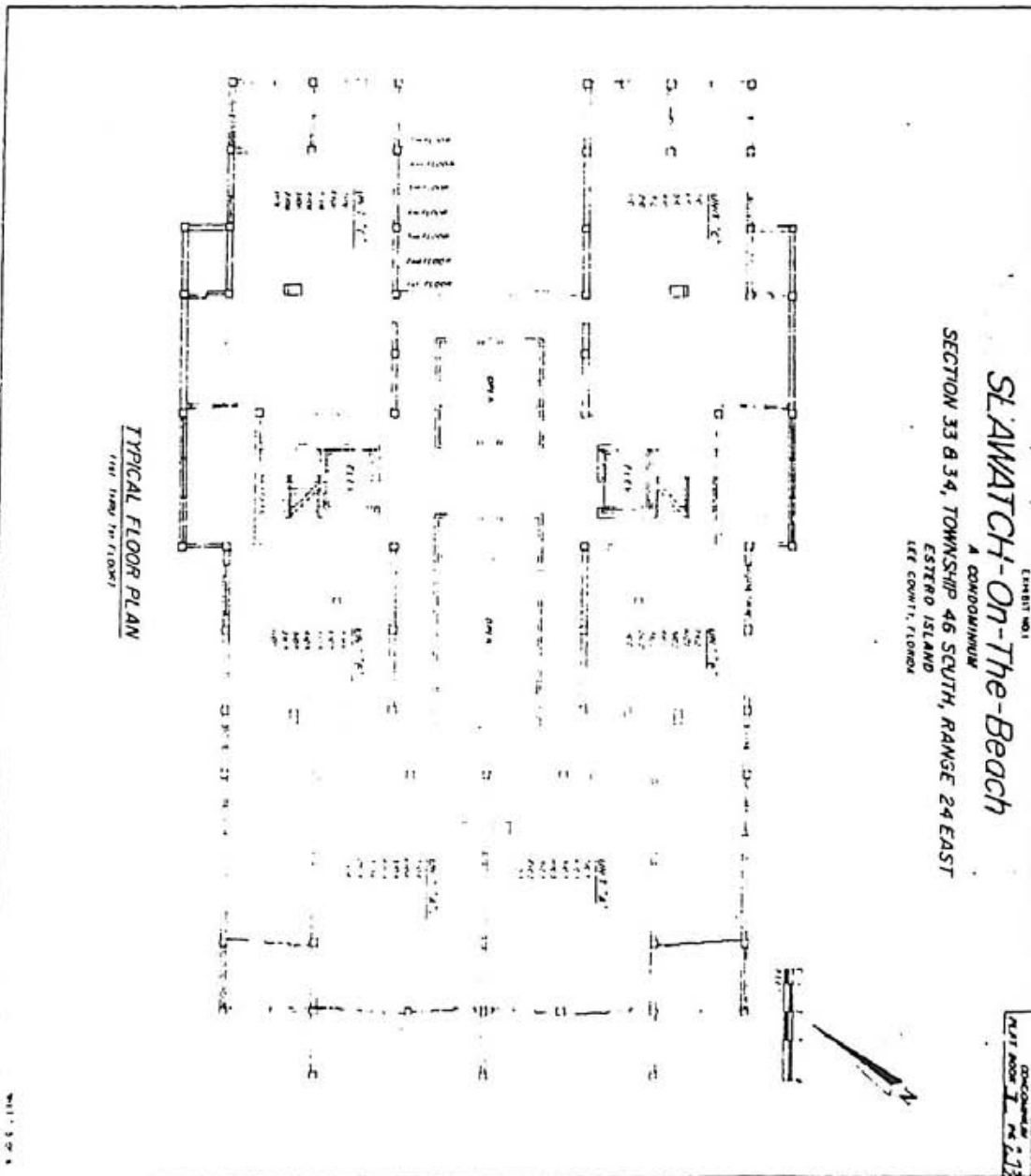
RECORDERS FILE

Legality of Recording of this Plan is Guaranteed by the State of Florida

SECTION 33 B 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST
ESTERO ISLAND
LEE COUNTY, FLORIDA

SLAWATCH-ON-The-Beach
A CONDOMINIUM

TYPICAL FLOOR PLAN
(SEE PLANS FOR FLOOR)



Relative to said Recreational Parcel:

- (1) The Association agrees that it will accept title to the Recreational Parcel to be conveyed from the Developer, and will hold the same for the use and benefit of all Condominium Unit Owners in the Condominium.
- (2) The Association shall operate and administer the Recreational Parcel, including the collection of any income therefrom and the payment of all costs and expenses incurred therewith. All income shall inure to the benefit of the Association and all such expenses including, but not limited to real estate taxes, utilities, insurance, maintenance and repairs shall be common expenses assessable and collectible by the Association against all of the Unit Owners in the manner provided by this Declaration.
- (3) The Developer shall convey the Recreational Parcel to the Association by statutory warranty deed, free and clear of all encumbrances except: conditions, restrictions, reservations, limitations, zoning and easements of record and taxes for the then current and subsequent years.
- (4) All expenses of conveying the Recreational Parcel to the Association, including state stamps and recording fees shall be borne by the Developer.

IN WITNESS WHEREOF, HI-AT DEVELOPMENT, INC., a Florida Corporation has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 12th day of February, 1982.

Signed, sealed and Delivered
in the presence of:

Robert P. Filler

HI-AT DEVELOPMENT, INC.,
a Florida Corporation

By: Robert P. Filler
President

(Corporate Seal)

1583- 476

STATE OF FLORIDA)
 SS:
COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Allen G. Ten Brook, to me well known to be the person described in and who executed the foregoing instrument as President of HI-AT DEVELOPMENT, INC., a Florida Corporation and he acknowledged before me that he executed such instrument as such officer of said Corporation and that the seal affixed thereto is the corporate seal of said Corporation, and that same was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and official seal, at the State and County aforesaid, this 12th day of February, 1982.

Thany C. Miller (SEAL)
Notary Public, State
of Florida

My Commission Expires:

My Commission Expires Aug. 16, 1982

FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, SEAWATCH ON-THE-BEACH CONDOMINIUM ASSOCIATION, INC., a Florida Corporation not-for-profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Condominium and Exhibits attached hereto.

IN WITNESS WHEREOF, the above described Corporation, a Florida Corporation not-for-profit, has caused these presents to be signed in its name by its President, and its Corporate Seal affixed, attested by its Secretary, this 12th day of February, 1982.

Signed, sealed and delivered
in the presence of:

Robert P. Felder

SEAWATCH ON-THE-BEACH CONDOMINIUM ASSOCIATION, INC.

By: Allen G. Ten Brook (SEAL)
Allen G. Ten Brook,
President

Attest: Timothy R. Boggett (SEAL)
Timothy R. Boggett,
Secretary

(ASSOCIATION)

1583 477

STATE OF FLORIDA)
SS:
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared Allen G. Ten Broek and Timothy R. Bogott, to me well known to be the persons described in and who executed the foregoing instrument as President and Secretary, respectively, of SEAWATCH ON-THE-BEACH CONDOMINIUM ASSOCIATION, INC., a Florida Corporation not-for-profit, and they severally acknowledged before me that they executed such instrument as such officers of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Corporation and that same was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and Official Seal at said County and State, this 12th day of February, 1982.

Mary C. Miller (SEAL)
Notary Public, State of
Florida

My Commission Expires:

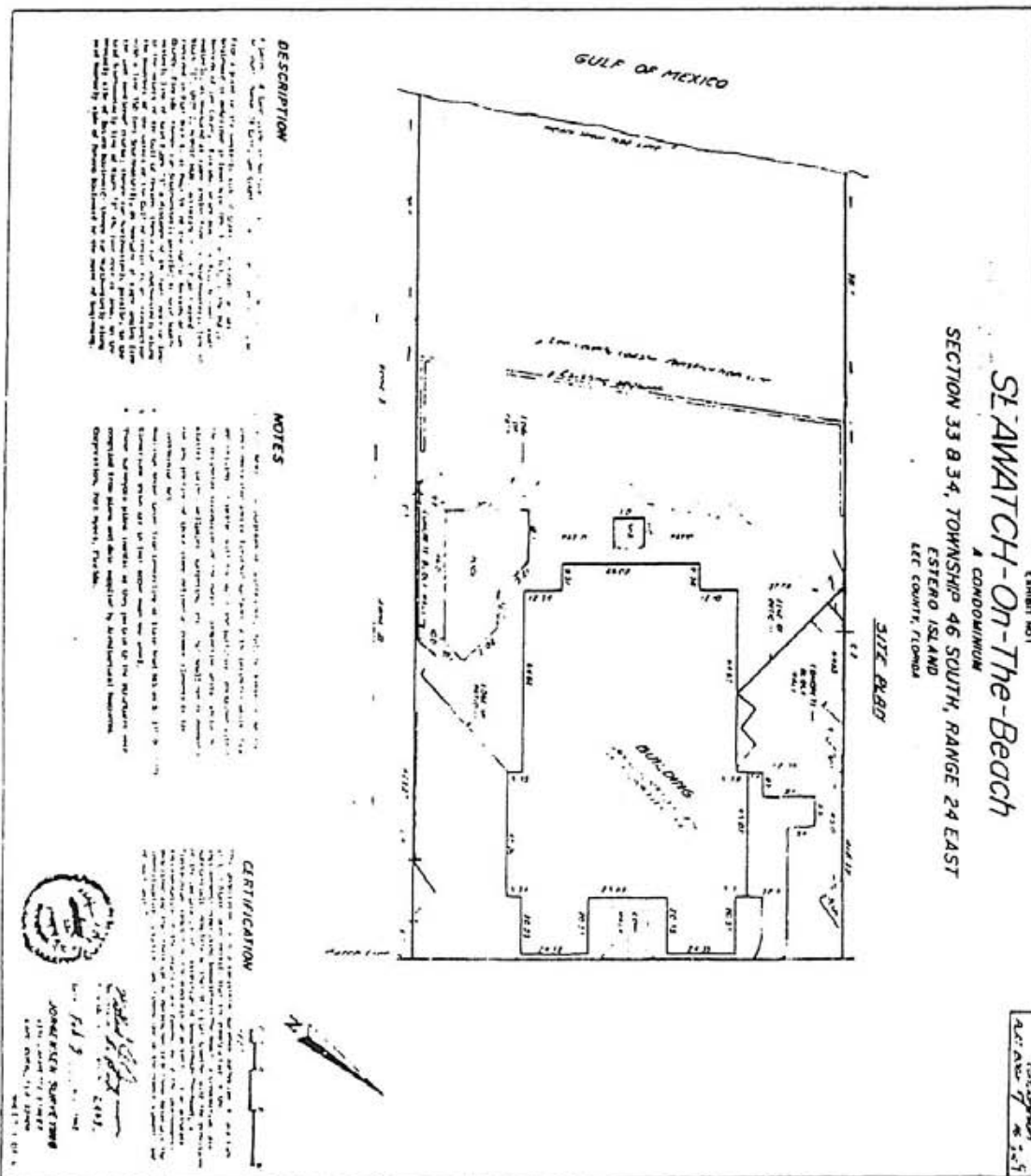
My Commission Expires Aug. 16, 1982

1583 478

EXHIBIT NO. 1
TO DECLARATION

REC 1583 PG 479

RECEIVED
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U.S. DEPT. OF AGRICULTURE
BUREAU OF LAND MANAGEMENT



REC'D FEB 1970

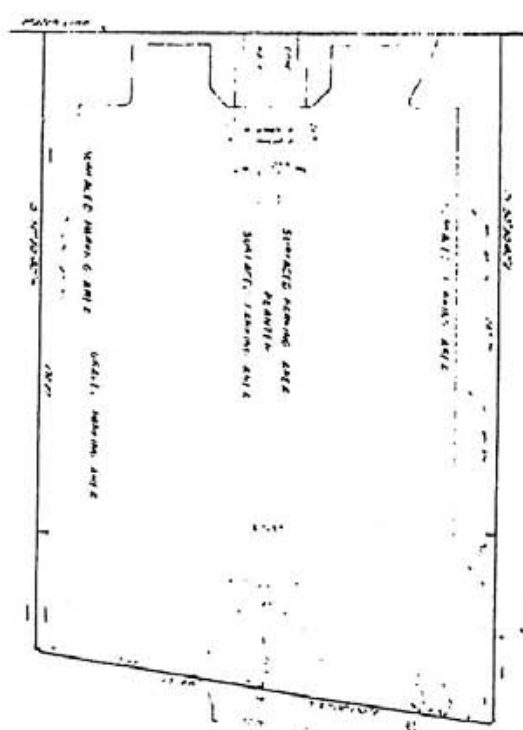
City of Miami Dept. of Planning

1583 PG 480

SE. WATCH-ON-The-Beach

SECTION 33 B 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST
ESTERO ISLAND
LEE COUNTY, FLORIDA

SITE PLAN



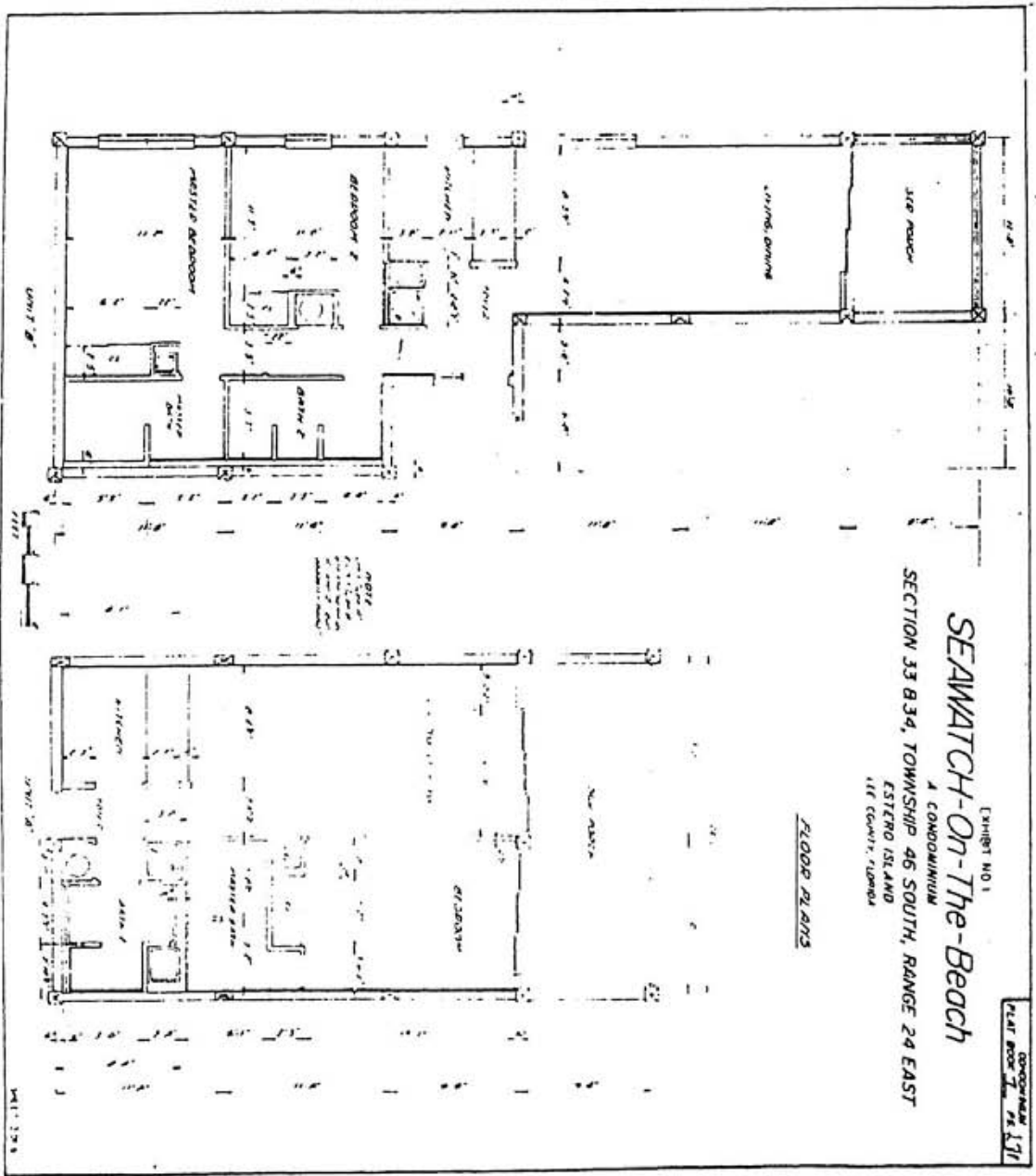
NOTES

1. The site plan is based on the 1968 aerial photograph and the 1968 plat map.

2. The site plan is subject to the 1968 plat map and the 1968 aerial photograph.

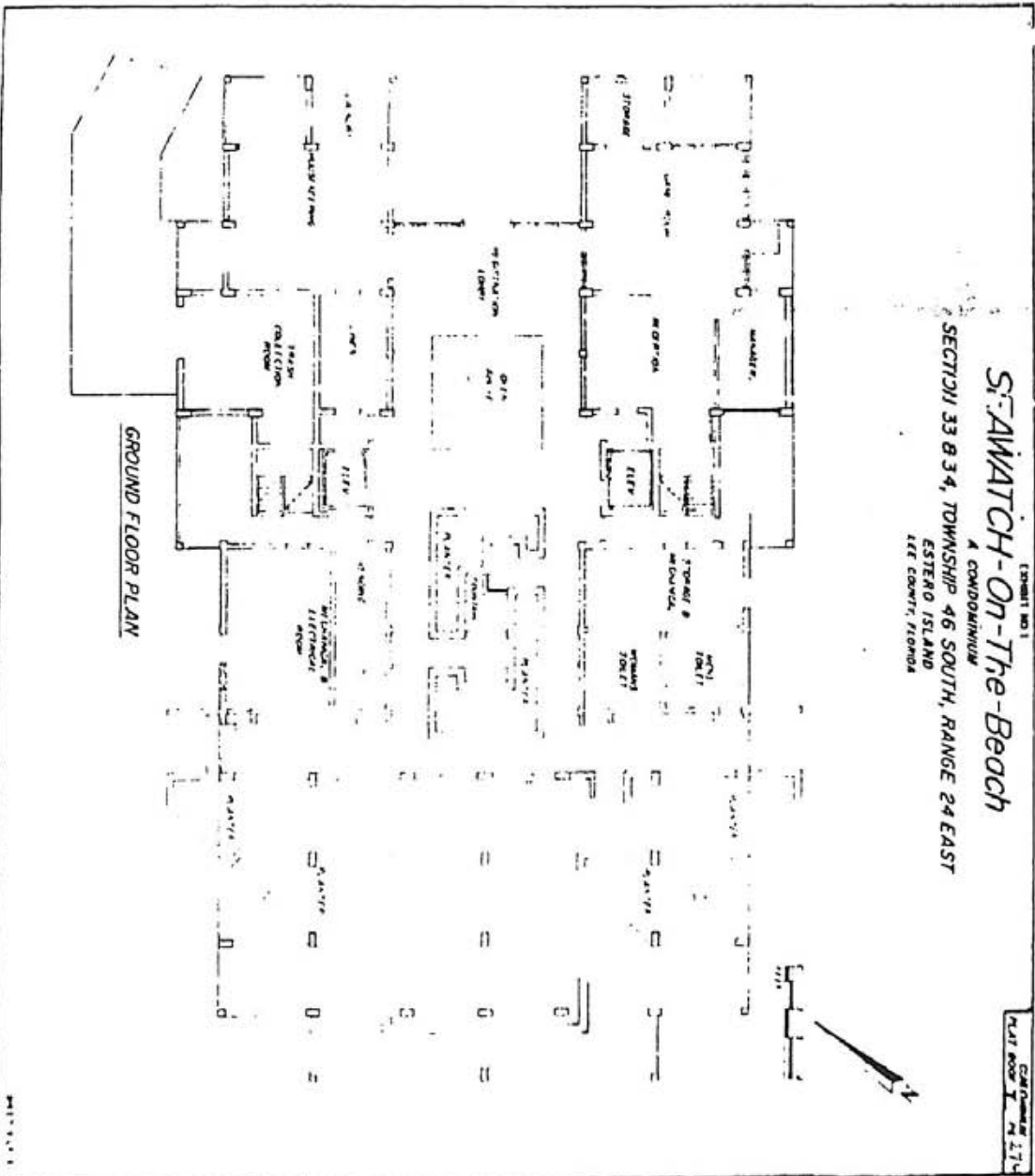
SECTION 33 B34, TOWNSHIP 46 SOUTH, RANGE 24 EAST
ESTERO ISLAND
1ST CONDOMINIUM

OFF REC 1583 PG 481



CONDOMINIUM
PLAT BOOK 1, PG 171

RECORDED
INDEXED
SECTION 33 B 3 4



BY-LAWS
OF
SEAWATCH ON-THE-BEACH CONDOMINIUM ASSOCIATION, INC.
A FLORIDA NON-PROFIT CORPORATION

ARTICLE I. IDENTITY

The following By-Laws shall govern the operation of the Condominium created by the Declaration of Condominium to which these By-Laws are attached.

The Association whose name appears at the end of this instrument is a Florida Corporation not-for-profit, organized and existing under the laws of the State of Florida for the purpose of administering the Condominium created by the Declaration of Condominium to which these By-Laws are attached.

Section 1. The office of the Association shall be at the Condominium Property, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 2. The Seal of the Corporation shall bear the name of the Corporation, the word "Florida", the words, "Corporation not for profit", and the year of incorporation.

Section 3. As used herein, the word, "Corporation", shall be the equivalent of "Association"; as defined in the Declaration of Condominium to which these By-Laws are attached. All other words, as used herein, shall have the same definitions as attributed to them in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE II. MEMBERSHIP AND VOTING PROVISIONS

Section 1. Membership: Membership in the Association shall be limited to Owners of the Condominium Units in Condominiums wherein this Corporation has been designated the Association to operate and administer said Condominium by virtue of the Declaration of Condominium of said Condominium. Transfer of Unit Ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit Ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the "voting member". If Unit Ownership is vested in a Corporation, said Corporation may designate an individual officer or employee of the Corporation as its "voting member". Notwithstanding the foregoing, each Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership shall be entitled to cast his share of the vote of the Unit in which he owns his Unit Weeks. "Unit committed to Interval Ownership" and "Interval Ownership" are defined in the Declaration of Condominium.

Section 2. Voting:

(a) The Owner(s) of each Condominium Unit shall be entitled to one (1) vote. If a Condominium Unit Owner owns more than one (1) Unit, he shall be entitled to one (1) vote for each Unit owned. The vote of a Condominium Unit shall not be divisible. Notwithstanding the foregoing, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to 1/50 of the

total vote assigned to the Unit in which he owns his Unit Weeks for each Unit Week owned. The Association shall not have a vote for any Unit Weeks conveyed to it.

(b) A majority of the Unit Owners' total votes shall decide any question, unless the Declaration of Condominium, By-Laws or Articles of Incorporation of the Association provide otherwise.

Section 3. Quorum: Unless otherwise provided in these By-Laws, the presence in person or by proxy of twenty-five (25%) percent of the Unit Owners' total votes shall constitute a quorum.

Section 4. Proxies: Votes may be cast in person or by proxy. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5). Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

Section 5. Designation of Voting Member: If a Condominium Unit is owned by one person, his right to vote shall be established by the recorded title to the Unit. If a Condominium Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated in a Certificate, signed by all of the recorded Owners of the Unit and filed with the Secretary of the Association. If a Condominium Unit is owned by a Corporation, the officer or employee thereof entitled to cast the vote of the Unit for the Corporation shall be designated in a Certificate for this purpose, signed by the President or Vice-President, attested to by the Secretary or Assistant Secretary of the Corporation, and filed with the Secretary of the Association. The person designated in such Certificate who is entitled to cast the vote for a Unit shall be known as the "voting member". If such a Certificate is not on file with the Secretary of the Association for a Unit owned by more than one person or by a Corporation, the vote of the Unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit, except if said Unit is owned by a husband and wife. Such Certificates shall be valid until revoked or until superseded by a subsequent Certificate, or until a change in the Ownership of the Unit concerned. If a Condominium Unit is owned jointly by a husband and wife, the following three provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a voting member.

(b) If they do not designate a voting member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. (As previously provided, the vote of a Unit is not divisible).

(c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

Section 6. Units Committed to Interval Ownership: Notwithstanding any other provisions in these By-Laws, each Owner

of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to cast the fractional vote attributable to his Unit Weeks owned. In the case of a Unit committed to Interval Ownership, the provisions of Section 5, Designation of Voting Member, shall apply to each Unit Week owned.

ARTICLE III. MEETING OF THE MEMBERSHIP

Section 1. Place: All meetings of the Association membership shall be held at the Condominium(s) property, or at such other place and at such time as shall be designated by the Board of Directors of the Association and stated in the notice of the meeting, and shall be open to all Unit Owners.

Section 2. Notices: It shall be the duty of the Secretary to mail or deliver a notice of each annual or special meeting, stating the time and place thereof, to each Unit Owner of record at least fourteen (14) but not more than forty-five (45) days prior to such meeting. Notice of any special meeting shall state the purpose thereof. All notices shall be mailed to or served at the address of the Unit Owner as it appears on the books of the Association.

Section 3. Annual Meeting: The annual meeting shall be held in December of each year at a date, time and place to be determined by the Board for the purpose of electing Directors and transacting any other business authorized to be transacted by the members, provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next secular day following. At the annual meeting, the members shall elect by plurality vote - (cumulative voting prohibited), a Board of Directors, and shall transact such other business as may properly be brought before the meeting.

Section 4. Special Meeting: Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, or at the request, in writing of voting members representing twenty-five percent (25%) of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the objects stated in the Notice thereof.

Section 5. Waiver and Consent: Whenever the vote of members at a meeting is required or permitted by any provision of these By-Laws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if not less than a majority of the members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken; however, notice of such action shall be given to all members, unless all members approve such action.

Section 6. Adjourned Meeting: If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

Section 7. Approval or Disapproval: Approval or disapproval of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the voting members provided, however, that where a Unit is owned jointly by a

husband and wife, and they have not designated one of them as a voting member, their joint approval or disapproval shall be required where they are both present, or in the event only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

Section 8. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to notice of all Association meetings, and shall be entitled to attend the Association's meetings, and it may designate such person(s) as it desires to attend such meetings on its behalf.

ARTICLE IV. DIRECTORS

Section 1. Number, Term and Qualifications: The affairs of the Association shall be governed by a Board of Directors composed of not less than three (3) nor more than seven (7) persons, as is determined from time to time by the members. All Directors, except those designated by the Developer, shall be members of the Association. All officers of a Corporate Unit Owner shall be deemed to be members of the Association so as to qualify as a Director herein. The term of each Director's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3, below.

Section 2. First Board of Directors:

(a) The first Board of Directors of the Association who shall hold office and serve until their successors have been elected and qualified, shall consist of the following:

Allen G. Ten Broek
Robert M. Taylor
Timothy R. Bogott

(b) The organizational meeting of a newly elected Board of Directors of the Association shall be held within ten (10) days of their election, at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further Notice of the organizational meeting shall be necessary, provided a quorum shall be present.

Section 3. Removal of Directors: At any time after the first annual meeting of the membership at any duly convened regular or special meeting, any one or more of the Directors may be removed, with or without cause, by the affirmative vote of the voting members casting not less than a majority of the total votes of all members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Should the membership fail to elect said successor, the Board of Directors may fill the vacancy in the manner provided in Section 4, below.

Section 4. Vacancies on Directorate: If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors.

Section 5. Disqualification and Resignation of Directors: Any Director may resign at any time by sending a written notice of such resignation to the office of the Corporation, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. Commencing with the Directors elected at such first annual meeting of the membership, the transfer of title of his Unit by a Director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors. No member shall continue to serve on the Board should he be more than thirty (30) days delinquent in the payment of any assessment or maintenance fee and said delinquency shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

Section 6. Regular Meetings: The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings shall nevertheless, be given to each Director personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting. All meetings of the Board of Directors, including special meetings in accordance with Section 7 below, shall be open to all Unit Owners.

Section 7. Special Meetings: Special meetings of the Board of Directors may be called by the President, and in his absence, by the Vice-President, or by a majority of the members of the Board of Directors, by giving five (5) days notice, in writing, to all of the members of the Board of Directors of the time and place of said meeting. All notices of special meetings shall state the purpose of the meeting.

Section 8. Directors' Waiver of Notice: Before or at any meeting of the Board of Directors, any Director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no Notice shall be required and any business may be transacted at such meeting.

Section 9. Quorum: At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice. A Director may join in the action of a meeting by signing and concurring in the Minutes thereof, but such concurrence shall not constitute the presence of such Director for the purpose of determining a quorum.

Section 10. Compensation: The Directors' fees, if any, shall be determined by the voting members.

Section 11. Developer's Selection of Directors: Subject to the provisions of Section 718.301, of the Condominium Act, the Developer shall have the right to designate the Directors who need not be Owners of Units or Unit Weeks in the Condominium,

and said Directors may not be removed by members of the Association, as elsewhere provided herein; and where a vacancy occurs for any reason whatsoever, the vacancy shall be filled by the person designated by the Developer.

Section 12. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to notice of all Directors' meetings and shall be entitled to attend the Directors' meetings and it may designate such person(s) as it desires to attend such meetings on its behalf.

Section 13. Powers and Duties: The Board of Directors of the Association shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration of Condominium, this Association's Articles of Incorporation, or these By-Laws, directed to be exercised and done by Unit Owners. These powers shall specifically include, but shall not be limited to the following:

- (a) To exercise all powers specifically set forth in the Declaration of Condominium, this Association's Articles of Incorporation, in these By-Laws, and in the Condominium Act, and all powers incidental thereto.
- (b) To make and determine assessments and maintenance fees, collect said assessments and maintenance fees, and use and expend the assessments and maintenance fees, to carry out the purposes and powers of the Association.
- (c) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Condominium, and of the common areas and facilities including the right and power to employ attorneys, accountants, contractors, and other professionals as the need arises.
- (d) To make and amend regulations respecting the operation and use of the Common Elements and Condominium Property, and the use and maintenance of the Condominium Units therein.
- (e) To contract for the management of the Condominium. To contract for the management or operation of portions of the Common Elements susceptible to the separate management or operation thereof, and to lease or concession such portions.
- (f) The further improvement of the Condominium Property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into agreements pursuant to Section 718.114, of the Condominium Act, and as amended, subject to the provisions of the applicable Declaration of Condominium, this Association's Articles of Incorporation and these By-Laws.
- (g) Designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least three (3) members of the Association. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular Minutes of their proceedings and report the same to the Board of Directors, as required. The foregoing powers shall be exercised by the Board of Directors or its contractor or employees, subject only to approval by Unit Owners when such is specifically required.

(h) To enter into and terminate Agreements with organizations providing Owners of Unit Weeks the opportunity to exchange their time periods with Owners of time periods at other resorts.

ARTICLE V. OFFICERS

Section 1. Elective Officers: The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors.

One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice-President shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice-President being members of the Board of Directors shall not apply while the Association is under the control of the Developer, the control being the right of the Developer to select a majority of the Board of Directors in accordance with Section 718.301, of the Condominium Act.

Section 2. Election: The officers of the Association designated in Section 1, above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members.

Section 3. Appointive Officers: The Board may appoint Assistant Secretaries and Assistant Treasurers, and such other officers as the Board of Directors deems necessary.

Section 4. Term: The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors, provided however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors (e.g., if the Board of Directors is composed of five persons, then three of said Directors must vote for removal). If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President: He shall be the chief executive officer of the Association; he shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

Section 6. The Vice-President: He shall perform all of the duties of the President in his absence, and such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 7. The Secretary: He shall issue notices of all Board of Directors' meetings and all meetings of the Unit Owners; he shall attend and keep the Minutes of same; he shall have charge of all of the Association's books, records and papers, except those kept by the Treasurer. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 8. The Treasurer:

(a) He shall have custody of the Association's funds

and securities, except the funds Payable to any Management firm, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association, in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the manner required by Section 718.111(7)(b), of the Condominium Act.

(b) He shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the Association.

(c) He shall collect the assessments and maintenance fees and shall promptly report the status of collections and of all delinquencies to the Board of Directors.

(d) He shall give status reports to potential transferees on which reports the transferees may rely.

(e) The Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

(f) The duties of the Treasurer may be fulfilled by a Management Firm employed by the Association, and said Management Firm shall fulfill the duties of the Treasurer, and shall have custody of such books of the Association as the Board of Directors determines in their sole discretion and the foregoing may include any books required to be kept by the Secretary of the Association.

ARTICLE VI. FINANCES, ASSESSMENTS AND MAINTENANCE FEES

Section 1. Depositories: The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors, and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by at least two officers of the Association; provided, however, that the provisions of any Management Agreement between the Association and a Management Firm relative to the subject matter in this Section shall supersede the provisions hereof.

Section 2. Fidelity Bonds: The Treasurer and all officers who are authorized to sign checks, and all officers and employees of the Association, and any contractor handling or responsible for Association funds shall be bonded in such amount as may be determined by the Board of Directors. The premiums on such Bonds shall be paid by the Association. The Bond shall be in an amount sufficient to equal the monies an individual handles or has control of via a signatory or a bank account or other depository account.

Section 3. Fiscal Year: The fiscal year for the Association shall begin on the first day of January of each year provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 4. Determination of Assessments:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sum or sums necessary and adequate for the common expenses of the Condominium. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, and any other expenses designated as common expenses from time to time by the Board of Directors of the Association, or under the provisions of the Declaration of Condominium to which these By-Laws are attached. The Board of Directors is specifically empowered, on behalf of the Association to make and collect assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements of the Condominium. Funds for the payment of common expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing common expenses, as provided in the Declaration. Regular assessments shall be due and payable monthly on the first day of each month. Maintenance fees for Units committed to Interval Ownership shall be payable quarterly and shall be due on the first day of January, April, July and October in advance, unless otherwise ordered by the Board of Directors. Special assessments, should such be required by the Board of Directors, shall be levied in the same manner as hereinbefore provided for regular assessments, and shall be payable in the manner determined by the Board of Directors.

(b) A copy of the proposed annual budget of common expenses shall be mailed to the Unit Owners not less than thirty (30) days prior to the meeting at which the budget will be considered, together with a notice of that meeting. The Unit Owners shall be given written notice of the time and place at which the meeting of the Board of Directors shall be held to consider the proposed annual budget of common expenses, and such meeting shall be open to the Unit Owners. If a budget is adopted by the Board of Directors which requires assessment against the Unit Owners in any fiscal or calendar year exceeding 115% of such assessments for the preceding year, upon written application of 10% of the Unit Owners, a special meeting of the Unit Owners shall be held upon no less than ten (10) days written notice to each Unit Owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof, at which special meeting Unit Owners may consider and enact a revision of the budget, or recall any and all members of the Board of Directors and elect their successors. In either case, unless these By-Laws shall require a larger vote, the revision of the budget or the recall of any and all members of the Board of Directors shall require a vote of not less than a majority of the whole number of votes of all Unit Owners. The Board of Directors may in any event propose a budget to the Unit Owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the Unit Owners at the meeting, or by a majority of their whole number by a writing, such budget shall not thereafter be reexamined by the Unit Owners in the manner hereinabove set forth. In determining whether assessments exceed 115% of similar assessments in prior years, there shall be excluded in the computation, any provision for reasonable reserves made by the Board of Directors with respect to repair or replacement of the Condominium Property or with

respect to anticipated expenses by the Condominium Association which are not anticipated to be incurred on a regular or annual basis and there shall be excluded from such computation, assessment for betterments to the Condominium Property if these By-Laws so provide or allow the establishment of reserves, or assessments for betterments to be imposed by the Board of Directors, provided, however, that so long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessment without approval of a majority of the Unit Owners. When the Board of Directors has determined the amount of any assessment, the Treasurer of the Association shall mail or present to each Unit Owner a statement of said Unit Owner's assessment. All assessments shall be payable to the Treasurer of the Association and, upon request, said Treasurer shall give a receipt for each payment made to him.

Section 5. Determination of Maintenance Fee:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sums necessary and adequate for the maintenance fee on Condominium Units committed to Interval Ownership. The maintenance fee on such Units shall include the items specified in the Declaration of Condominium to which these By-Laws are attached.

(b) When the Board of Directors has determined the amount of the maintenance fee, the Treasurer of the Association shall mail or present to each Owner of Unit Weeks within all Units committed to Interval Ownership a statement of said maintenance fee. All maintenance fees shall be payable to the Treasurer of the Association and, upon receipt, said Treasurer shall give a receipt for each payment made to him, if requested by the Unit Owners.

Section 6. Application of Payments and Co-Mingling of Funds:

All sums collected by the Association from assessments and maintenance fees may be co-mingled in a single fund or divided into more than one fund, as determined by the Board of Directors of the Association. All assessment payments and maintenance fees by a Unit Owner shall be applied as to interest, delinquencies, costs and attorneys' fees, other charges, expenses and advances as provided herein and in the Declaration of Condominium and general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

Section 7. Acceleration of Assessment Installments Upon

Default: If a Unit Owner shall be in default in the payment of an installment upon any assessment or maintenance fee, the Board of Directors may accelerate the remaining monthly or quarterly installments for the fiscal year upon notice thereof to the Unit Owner and, thereupon, the unpaid balance of the assessment or maintenance fee, shall become due upon the date stated in the notice, but not less than fifteen (15) days after delivery of or the mailing of such notice to the Unit Owner.

Section 8. Audits: An audit of the accounts of the

Association shall be made annually. Said audit shall be prepared by such accountant as the Board of Directors determines, and a copy of said report shall be available to the members of the Association in the office of said Association and with the Treasurer of the Association. Such report shall be available not later than three (3) months after the end of the year for which the report is made.

Section 9. Application of Surplus: Any payments or receipts to the Association, whether from Unit Owners or otherwise, paid during the year in excess of the operating expenses and other common expenses of the Association shall be kept by the Association and applied against the Association's expenses for the following year.

ARTICLE VII. ADDITIONS OR ALTERATIONS

There shall be no additions or alterations to the common elements or limited common elements of the Condominium(s) which this Association operates and maintains except as specifically provided for in said Condominium's Declaration of Condominium.

ARTICLE VIII. COMPLIANCE AND DEFAULT

Section 1. Violations: In the event of a violation (other than the nonpayment of an assessment or maintenance fee) by the Unit Owner in any of the provisions of the Declaration of Condominium, of these By-Laws, or of the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of seven (7) days from date of notice, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration of the By-Laws, or of the pertinent provisions of the Condominium Act, and the Association may then, at its option, have the following elections:

- (a) An action at law to recover for its damage, on behalf of the Association or on behalf of the other Unit Owners.
- (b) An action in equity to enforce performance on the part of the Unit Owner; or
- (c) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Any violations which are deemed by the Board of Directors to be a hazard to public health may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner as a specific item, which shall be a lien against said Owner's Unit or Unit Week with the same force and effect as if the charge were a part of the common expenses.

Section 2. Negligence or Carelessness of Unit Owner, Etc.: All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by any insurance company of its right of subrogation. The expense for any maintenance, repair or replacement required, as provided in this Section, shall be charged to said Unit Owner as a specific item which shall be a lien against said Owner's Unit or Unit Week with the same force and effect as if the charge were a part of the common expenses.

Section 3. Costs and Attorneys' Fees: In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

Section 4. No Waiver of Rights: The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 5. Election of Remedies: All rights, remedies and privileges granted to the Association or Unit Owner, pursuant to any terms, provisions, covenants or conditions of the Condominium documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by the Condominium documents, or at law or in equity.

Section 6. Units Committed to Interval Ownership: Any liens or sanctions against an Owner of Unit Weeks in a Unit committed to Interval Ownership for an alleged default as set forth in this Article VIII, shall be limited to the Unit Weeks owned by such Owner and shall be of no force and effect as to any other Unit Weeks or Owner thereof. The term "Unit Owner" as used throughout this article shall be deemed to include Owners of Unit Weeks in Units committed to Interval Ownership.

ARTICLE IX. ACQUISITION OF UNITS OR UNIT WEEKS ON FORECLOSURE

Section 1. Acquisition of Units or Unit Weeks on Foreclosure: At any foreclosure sale of a Unit or Unit Week, the Board of Directors may, with the authorization and approval by the affirmative vote of voting members casting not less than sixty percent (60%), of the total votes of the members present at any regular or special meeting of the members wherein said matter is voted upon, acquire in the name of the Association, or its designee, a Condominium Parcel or Unit Week being foreclosed. The term "foreclosure", as used in this Section, shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments, maintenance fees or holdover charges.

The power of the Board of Directors to acquire a Condominium Parcel or Unit Week at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the said Board of Directors or of the Association to do so at any foreclosure sale, the provisions hereof being permissive in nature and for the purpose of setting forth the power in the Board of Directors to do so should the requisite approval of the voting members be obtained. The Board of Directors shall not be required to obtain the approval of Unit Owners at the foreclosure sale of a Unit or Unit Week, due to the foreclosure of the Association's lien for assessments, maintenance fees or holdover charges under the provisions of the Declaration of Condominium to which these By-Laws are attached notwithstanding the sum the Board of Directors determines to bid at such foreclosure sale.

Section 2. Transfer of Units: All Owners of Units or Unit Weeks in a Unit committed to Interval Ownership shall notify the Association, of any transfer, by sale or otherwise, of said Unit or Unit Week within ten (10) days of the date of same. Said notice shall include such information and be in the form that the Association shall prescribe from time to time. The Association may send all necessary notices to the person shown as Owner of said Unit or Unit Weeks in its records, and said notice shall be binding as to any other Owner of said Unit or Unit Weeks where the Association has not been notified as provided herein.

ARTICLE X. AMENDMENTS TO THE BY-LAWS

The By-Laws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

- (1) Notice of the meeting shall contain a statement of the proposed Amendment.
- (2) If the Amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of the voting members casting a majority of the total votes of the members of the Association.
- (3) If the Amendment has not been approved by the unanimous vote of the Board of Directors, then the Amendment shall be approved by the affirmative vote of the voting members casting not less than three-fourths (3/4ths) of the total votes of the members of the Association; and
- (4) Said Amendment shall be recorded and certified as required by the Condominium Act.
- (5) Notwithstanding the foregoing, these By-Laws may only be amended with the written approval when required of the parties specified in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XI. NOTICES

Whatever notices are required to be sent hereunder shall be delivered or sent in accordance with the applicable provisions for notices as set forth in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XII. INDEMNIFICATIONS

The Association shall indemnify every Director and every Officer, his heirs, executors, and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or Officer of the Association, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XIII. LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of membership in the Condominium shall not relieve or release any such former Owner or member from any liability or obligations incurred under or in any way connected with the Condominium during the period of such ownership and

membership, or impair any rights or remedies which the Association may have against such former Owner and member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

ARTICLE XIV. LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent condition in the property, nor for injury or damage caused by the elements or by other Owners or persons.

ARTICLE XV. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Condominium Act, the Declaration of Condominium, or these By-Laws.

ARTICLE XVI. LIENS

Section 1. Protection of Property: All liens against a Condominium Unit, other than for mortgages, taxes or special assessments, shall be satisfied or otherwise removed within thirty (30) days of the date the lien attached. All taxes and special assessments upon a Condominium Unit or Unit Week shall be paid before becoming delinquent, as provided in these Condominium documents or by law, whichever is sooner.

Section 2. Notice of Lien: A Unit Owner shall give notice to the Association of every lien upon his Unit, other than for mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

Section 3. Notice of Suit: Unit Owners shall give notice to the Association of every suit or other proceeding which will or may affect title to his Unit or any part of the property, such notice to be given within five (5) days after the Unit Owner receives notice thereof.

Section 4. Failure to Comply: Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

Section 5. Units Committed to Interval Ownership: In the case of a Unit committed to Interval Ownership, an Owner of Unit Weeks in such Unit shall be required to give notices under Section 2, and Section 3, of this Article XVI, only as to liens, suits, and proceedings affecting title to the Unit Weeks which he owns. Any lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, or against the Unit Weeks owned by him, shall be limited to the Unit Weeks owned by him and shall not encumber the property, real or personal, of any other Owner of Unit Weeks in said Unit.

ARTICLE XVII. RULES AND REGULATIONS

Section 1. The Board of Directors may, from time to time, adopt or amend previously adopted administrative Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Common Elements and Limited Common Elements of the Condominium and of the Condominium Property and any facilities or services made available to the Unit Owners. A copy of the Rules and Regulations adopted from time to time as herein provided shall from time to time be posted in a conspicuous

place and/or copies of same shall be furnished each Unit Owner.

Section 2. As to Condominium Units: The Board of Directors, may from time to time adopt or amend previously adopted Rules and Regulations governing and restricting the use and maintenance of the Condominium Units provided, however, that copies of such Rules and Regulations, prior to the time the same become effective, shall be posted in a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 3. Conflict: In the event of any conflict between the Rules and Regulations adopted, or from time to time amended, and the Condominium documents, or the Condominium Act, the latter shall prevail. If any unreconciled conflict should exist or hereafter arise with respect to the interpretation of those By-Laws and the Declaration of Condominium, the provisions of said Declaration shall prevail.

State of Florida

1583^{re} 500



Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of SEAWATCH ON-THE-BEACH CONDOMINIUM ASSOCIATION, INC., a corporation not for profit organized under the Laws of the State of Florida, filed on June 15, 1981, as shown by the records of this office.

The charter number for this corporation is 758742.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
16th day of June, 1981.



CEH 101 Rev. 12-80

George Firestone
Secretary of State

EXHIBIT NO. 3
TO DECLARATION

JUN 11 1961
C 12, 11 '61
JUL 11 1961

ARTICLES OF INCORPORATION:

We, the undersigned, hereby associate ourselves together for the purpose of forming a non-profit Corporation under the laws of the State of Florida, pursuant to Florida Statutes 617 Et Seq., and hereby certify as follows:

ARTICLE I.

The name of this Corporation shall be:

SEAWATCH ON-THE-BEACH CONDOMINIUM ASSOCIATION, INC.

ARTICLE II.

The general purpose of this non-profit Corporation shall be as follows: To be the "Association" (as defined in the Condominium Act of the State of Florida, F.S. 718 Et Seq.), for the operation of the Condominium known as Seawatch On-The-Beach, a Condominium, on Estero Island, Lee County, Florida to be created pursuant to the provisions of the Condominium Act, and as such Association, to operate and administer said Condominium, as set forth in the Declaration of Condominium establishing said Condominium and Exhibits annexed thereto.

ARTICLE III.

All persons who are Owners of Condominium Parcels within said Condominium shall automatically be members of this Corporation. Such membership shall automatically terminate when such person is no longer Owner of a Condominium Parcel. Membership in the Corporation shall be limited to such Condominium Parcel Owners.

Persons who own interests in Condominium Parcels under a plan of Interval Ownership, as defined in the By-Laws of this Corporation, shall be members of this Corporation, their rights and duties to be as defined in the Declaration of Condominium.

Subject to the foregoing, admission to and termination of membership shall be governed by the Declaration of Condominium that shall be filed for said Condominium among the Public Records of Lee County, Florida.

ARTICLE IV.

This Corporation shall have perpetual existence.

ARTICLE V.

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

Allen G. Ten Broek	6535 McGregor Boulevard No. 12 Fort Myers, Florida 33907
Robert M. Taylor	6535 McGregor Boulevard No. 12 Fort Myers, Florida 33907
Timothy R. Bogott	6535 McGregor Boulevard No. 12 Fort Myers, Florida 33907

ARTICLE VI.

Section 1. The affairs of the Corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than the number specified in the By-Laws. The Directors, subsequent to the first Board of Directors, shall be elected at the annual meeting of the membership, for a term of one (1) year, or until their successors shall be elected and shall qualify. Provisions for such election, and provisions respecting the removal, disqualification and resignation of Directors and for filling vacancies on the Directorate, shall be established by the By-Laws.

Section 2. The principal Officers of the Corporation shall be: President; Vice-President; Secretary; Treasurer (the last two Officers may be combined) who shall be elected from time to time, in the manner set forth in the By-Laws adopted by the Corporation.

ARTICLE VII.

The names of the Officers who are to serve until the first election of Officers, pursuant to the terms of the Declaration of Condominium and By-Laws, are as follows:

Allen G. Ten Broek	-	President
Robert M. Taylor	-	Vice-President
Timothy R. Bogott	-	Secretary/Treasurer

ARTICLE VIII.

The following persons shall constitute the first Board of Directors and shall serve until the first election of the Board of Directors at the first regular meeting of the membership:

Allen G. Ten Broek
Robert M. Taylor
Timothy R. Bogott

ARTICLE IX.

The By-Laws of the Corporation shall initially be made and adopted by its first Board of Directors.

Prior to the time the property described in Article II, hereinabove has been submitted to Condominium Ownership by the filing of the Declaration of Condominium, said first Board of Directors shall have full power to amend, alter or rescind said By-Laws by a majority vote.

After the property described in Article II, hereinabove has been submitted to Condominium Ownership by filing of the Declaration of Condominium, the By-Laws may be amended, altered, supplemented or modified by the membership at the annual meeting, or at a duly convened special meeting of the membership, by vote, as follows:

- A. If the proposed change has been approved by the unanimous approval of the Board of Directors, then it shall require only a majority vote of the total membership to be adopted.

- R. If the proposed change has not been approved by the unanimous vote of the Board of Directors, then the proposed change must be approved by three-fourths (3/4ths) of the total vote of the membership.

ARTICLE X.

Amendments to these Articles of Incorporation may be proposed by any member or Director and shall be adopted in the same manner as is provided for the Amendment of the By-Laws as set forth in Article IX, above. Said Amendment(s) shall be effective when a copy thereof, together with an attached Certificate of its approval by the membership, sealed with the Corporate Seal, signed by the Secretary or an Assistant Secretary, and executed and acknowledged by the President or Vice-President, has been filed with the Secretary of State, and all filing fees paid.

ARTICLE XI.

This Corporation shall have all of the powers set forth in Florida Statute 617.021, all of the powers set forth in the Condominium Act of the State of Florida, and all powers granted to it by the Declaration of Condominium and Exhibits annexed thereto, including the power to contract for the management of the Condominium and recreational facilities.

ARTICLE XII.

There shall be no dividends paid to any of the members, nor shall any part of the income of the Corporation be distributed to its Board of Directors or Officers. In the event there are any excess receipts over disbursements as a result of performing services, such excess shall be applied against future expenses. The Corporation may pay compensation in a reasonable amount to its members, Directors and Officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members as is permitted by the Court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

This Corporation shall issue no shares of stock of any kind or nature whatsoever. Membership in the Corporation and the transfer thereof, as well as, the number of members, shall be upon such terms and conditions as provided for in the Declaration of Condominium and By-Laws. The voting rights of the Owners of Parcels in said Condominium Property shall be as set forth in the Declaration of Condominium and/or By-Laws.

ARTICLE XIII.

The street address of the initial registered office of this Corporation is 6535 McGregor Boulevard, No. 12, Fort Myers, Florida 33907 and the name of the initial registered agent of this Corporation at that address is Allen G. Ten Broek.

IN WITNESS WHEREOF, the Subscribers hereto have hereunto set their hands and seals this 6 day of June, 1981.

Allen G. Ten Broek (SEAL)
Robert M. Taylor (SEAL)
Timothy R. Bogott (SEAL)

STATE OF FLORIDA)
) SS:
 COUNTY OF Lee)

BEFORE ME, the undersigned authority, personally appeared ALLEN G. TEN BROEK, ROBERT M. TAYLOR and TIMOTHY R. BOGOTT, being by me first duly sworn, acknowledged that they executed the foregoing Articles of Incorporation of Seawatch On-The-Beach Condominium Association, Inc., a Florida Corporation not-for-profit, for the purposes therein expressed.

WITNESS MY HAND and Official Seal, at the State and County aforesaid, this 6 day of June, 1981

James H. Brown (SEAL)
 Notary Public, State of
 Florida

My Commission Expires:

1583 506

CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR THE
SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT UPON WHOM
PROCESS MAY BE SERVED.

JUN 13 0 12 AM '61

STATE OF FLORIDA
COUNTY OF LEE

In pursuance of Chapter 48.091, Florida Statutes, the
following is submitted, in compliance with said Act:

First--That Seawatch On-The-Beach Condominium Association, Inc.
desiring to organize under the laws of the State of Florida
with its principal office, as indicated in the articles of
incorporation at City of Fort Myers County
of Lee, State of Florida
has named Allen G. Ten Broek
located at 6535 McGregor Boulevard, No. 12
(Street address and number of building,
Post Office Box address not acceptable)
City of Fort Myers, County of Lee
State of Florida, as its agent to accept service of process
within this state.

ACKNOWLEDGMENT: (MUST BE SIGNED BY DESIGNATED AGENT)

Having been named to accept service of process for the above
stated corporation, at place designated in this certificate, I
hereby accept to act in this capacity, and agree to comply with
the provision of said Act relative to keeping open said office.

By Allen G. Ten Broek
Allen G. Ten Broek
(Resident Agent)

" 1583rc 507

MANAGEMENT AGREEMENT
BETWEEN
SEAWATCH ON-THE-BEACH CONDOMINIUM ASSOCIATION, INC.
AND
MARINER PROPERTY MANAGEMENT, INC.

THIS AGREEMENT, made and entered into on the date last appearing in the body of this instrument, by and between the Florida Corporation whose name appears at the end of this Agreement as the Management Firm, hereinafter called the "Management Firm", and that certain Florida Corporation not for profit whose name appears at the end of this instrument as the Condominium Association, hereinafter called the "Association", which said terms shall be deemed to extend to and include the legal representatives, successors and assigns of the said parties hereto;

WITNESSETH:

THAT, WHEREAS, the Association is the Association responsible for the operation of that certain Condominium to be known as Seawatch On-The-Beach, a Condominium, and said Association is desirous of entering into a Management Agreement for the management of said Condominium; and

WHEREAS, the Management Firm is desirous of furnishing such management services; and

NOW, THEREFORE, for and in consideration of the mutual promises contained, it is agreed by and between the parties, as follows:

1. That the foregoing recitals are true and correct.
2. That the terms used in this Management Agreement shall be defined as said terms are defined and used in the Condominium Act, or in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4.
3. The Association does hereby employ the Management Firm as the exclusive Manager of the Condominium Property and the Management Firm hereby accepts such employment.
- 4(A). The term of this Agreement shall commence as of the date hereof through December 31, 1988, provided, however, that the Management Firm may, upon sixty (60) days written notice given to the Association, terminate and cancel this Agreement as of the last day of such month as is specified in the Notice of Cancellation. Thereafter, it shall be automatically renewed for successive two (2) year periods until terminated at a duly authorized meeting of the Owners by a majority of the total votes of all of the members of the Association, or by the Management Firm notifying the Association in writing that it will not renew this Agreement at such renewal date.
- 4(B). Notwithstanding the foregoing, the Association may terminate this Agreement, as provided under the provisions of F.S. 718.302.
5. The Management Firm shall perform by way of illustration and not of limitation, the following services:
 - (A) Cause to be hired, paid and supervised, all persons necessary to be employed in order to properly maintain and operate the Condominium, including a Manager, who, in each instance, shall be the employees of the Management Firm, as the Management Firm, in its absolute discretion shall determine, and cause to be discharged all persons unnecessary or undesirable.

(B) To maintain and repair the Condominium Property and the Common Elements of said Condominium to the same extent that the Association is required to maintain and repair same, as provided in said Condominium's Declaration of Condominium and Exhibits attached thereto. For any one item of repair, replacement or refurbishing as to the Condominium, the expense incurred as to the Condominium as a whole, shall not exceed the sum of Two Thousand Five Hundred Dollars (\$2,500.00), unless specifically authorized by the Board of Directors of the Association, except, however, in the case of an emergency, the Management Firm is authorized to expend any sum necessary to protect and preserve the Property.

(C) Take such action as may be necessary to comply with all laws, statutes, ordinances, rules and of all appropriate governmental authority, and the rules and regulations of the National Board of Fire Underwriters, or in the event it shall terminate its present functions, those of any other body exercising similar functions.

(D) To enter into contracts for garbage and trash removal, vermin extermination, and other services, subject to the approval of the Board of Directors and make all such contracts and purchases in either the Association's or Management Firm's name, as the Management Firm shall elect.

(E) To purchase equipment, tools, vehicles, appliances, goods, supplies and materials as shall be reasonably necessary to perform its duties, including the maintenance, upkeep, repair, replacement, refurbishing and preservation of the Condominium. Purchases shall be in the name of the Management Firm, or the Association, as the Management Firm shall elect.

(F) Cause to be placed or kept in force all insurance required or permitted in the Declaration of Condominium; to act as Agent for the Association, each Unit Owner, and for each Owner of any other insured interest; to adjust all claims arising under said insurance policies; to bring suit thereon and deliver releases upon payment of claims; to otherwise exercise all of the rights, powers and privileges of the insured parties; to receive on behalf of the insured parties, all insurance proceeds, subject to the provisions of the Declaration of Condominium.

(G) Maintain the Association's financial record books, accounts and other records as provided by the Association's By-Laws and pursuant to the Condominium Act; issue Certificates of account to members, their mortgagees and lienors without liability for errors unless as a result of gross negligence. Such records shall be kept at the office of the Management Firm and shall be available for inspection by Unit Owners or their authorized representatives at reasonable times. As a standard procedure, the Management Firm shall render to the Association a statement for each calendar year no later than the April 1st next thereafter. The Management Firm shall perform a continual internal audit of the Association's financial records for the purpose of verifying the same, but no independent or external audit shall be required of it. The consent of the Management Firm to an independent auditor shall not be unreasonably withheld.

(H) Maintain records sufficient to describe its services hereunder and such financial books and records sufficient in accordance with prevailing accounting standards to identify the

source of all funds collected by it in its capacity as Management Firm, and the disbursement thereof. Such records shall be kept at the office of the Management Firm, and shall be available for inspection by Unit Owners or their authorized representatives at reasonable times. The Management Firm shall perform a continual internal audit of the Management Firm's financial records relative to its services as Manager for the purpose of verifying same, but no independent or external audit shall be required of it.

(I) The Management Firm shall determine the budget as to the Condominium for the term of the Management Agreement, subject, however, to the approval of the Board of Directors. Upon said budget's being determined annually, the Management Firm shall submit annually to the Association the operating budget for the ensuing year, setting forth the anticipated income and expenses of the Condominium for the year, and said Management Firm shall specify therein each Unit Owner's share thereof. Should an increase in assessments be required or a special assessment be required during the year, the same shall be determined and made by the Management Firm subject to the approval of the Board of Directors and the Association shall be advised thereof and as to the share thereof payable by each of the Association's members, as the case may be. The Management Firm shall collect the assessments based upon the foregoing. The assessments as to each member of the Association shall be made payable to the Management Firm, or such other firm or entity as the Management Firm shall direct subject to the approval of the Board of Directors; and the Management Firm shall have the right to designate such member or members of the Association, or the Association itself, as it determines, to collect said assessments on behalf of the Management Firm and deliver same to it. The Management Firm shall not be responsible for obtaining the best price available as to any service, material or purchase, but shall, with impunity, purchase or contract for same subject to the approval of the Board of Directors with such person or party as it deems advisable and in the best interests of the Association and the Management Firm, without the necessity of obtaining the best price. Where the Management Firm does not submit an operating budget for the ensuing year to the Association as herein set forth, the operating budget for the current year shall be deemed to apply to the ensuing year and, in such case, each Unit Owner's share of same shall continue in the same amount subject, however, to the right of the Management Firm to increase assessments subject to the approval of the Board of Directors during the year or levy a special assessment subject to the approval of the Board of Directors where it determines that same is necessary or advisable subject to the applicable provisions of the Declaration of Condominium.

(J) Have sole authority and responsibility to maintain and replace the personal property within Units committed to Interval Ownership, and in such capacity to:

1. Determine the maintenance fee, proration of any applicable taxes, and other common expenses applicable to those Condominium Units committed to Interval Ownership, subject to the approval of the Board of Directors as defined in and provided for in the Declaration of Condominium. The Management Firm shall have sole discretion, while this Agreement remains in effect, for making determinations as to replacements of personal property located within such Units, decor, and all other decisions relating to Units committed to Interval Ownership; notwithstanding the foregoing, all

replacements shall be such as to maintain the standard of quality of the furniture, other personal property and decor, as originally contained in such Unit at the time it is committed to Interval Ownership.

2. It is understood by both parties that a portion of the maintenance fee will be set aside as a reserve for future replacements and repairs. The Management Firm shall have sole discretion as to the amounts of such reserves and application of same, subject to the approval of the Board of Directors.

(K) Deposit all funds collected from the Association's members, or otherwise accruing to the Association, in a special bank account or accounts of the Management Firm in banks and/or savings and loan associations in the State of Florida, with suitable designation indicating their source, separate from or co-mingled with similar funds collected by the Management Firm on behalf of other condominiums or entities which the Management Firm manages.

(L) May cause a representative of its organization to attend meetings of the Unit Owners and of the Board of Directors of the Association; however, it is understood and agreed that the Minutes of all the Association's meetings, whether of Unit Owners or of the Board of Directors, shall be taken by the Association's Secretary, and possession of the Minutes Book shall be in the custody of said Secretary, who shall always be responsible for preparing and furnishing notices of all meetings to the required parties.

(M) Promulgate, adopt and amend Rules and Regulations as it deems advisable subject to the approval of the Board of Directors in its sole discretion for the use and occupancy of the Condominium's Common Elements, Limited Common Elements and Units therein, and to enforce same. The Management Firm, in its sole discretion, shall determine all activities and programs to be carried on as to same and shall employ the personnel required therefor as it determines in its sole discretion.

(N) The Management Firm shall cause such alterations and/or additions to the Common Elements or Limited Common Elements of the Condominium Property, to be made as authorized by the Board of Directors of the Association and its members where required, pursuant to and in accordance with said Condominium's Declaration of Condominium and Exhibits attached thereto. As to the foregoing, the Management Firm shall be paid for the cost of its personnel and overhead, materials and equipment in regard thereto, and any and all contractors, subcontractors or materialmen as are required therefor.

(O) Retain and employ such professionals and such other experts whose services may be reasonably required to effectively perform its duties and exercise its powers hereunder, and to employ same on such basis as it deems most beneficial.

(P) Enter into Agreements upon such terms and conditions and for such purpose as the Management Firm determines in its sole discretion necessary subject to the approval of the Board of Directors as to the Common Elements of and the Condominium, and by agreement grant concessions and licenses subject to the approval of the Board of Directors to persons to provide facilities and

services as to and within the Condominium and cause coin vending machines and coin operated equipment and pay telephones to be installed within the Condominium and to purchase same on behalf of and at the cost and expense of the Condominium Association, or rent same or enter into agreements regarding same; however, all income derived by the Management Firm from the foregoing shall inure to the benefit of the Condominium Association; and all expenses appertaining thereto shall likewise be borne by said Condominium Association. The parties hereto recognize that agreements, concessions and licenses may be entered into to provide facilities and services as specified herein for very nominal or no compensation whatsoever. The Management Firm may enter into same in its sole discretion, and it shall use its best judgment; however, it shall not be responsible for same nor the fact that a greater sum might have been obtained nor a shorter period contracted for.

(Q) Make and collect special assessments for such purposes and against such parties as the Management Firm determines, subject to the provisions of the Declaration of Condominium.

(R) Exercise such powers and rights delegated to it, if any, under the terms and provisions of the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and all Exhibits attached to said Declaration.

(S) If maintenance of the Condominium referred to in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4, or any portion thereof, including any Unit, Units and/or the Common Elements, is required due to loss by Act of God or other cause, which is other than normal wear and tear, and which loss is less than "major damage", as defined in the Condominium's Declaration of Condominium to which this Agreement is attached, then in such event, the Management Firm shall be authorized and empowered, subject to the approval of the Board of Directors, to determine, assess, charge and levy the costs of repairing and restoring such loss among the Unit Owners in such proportions as it deems advisable, pursuant to the Declaration of Condominium to which this Agreement is attached, notwithstanding the fact that said loss or damage was, or was not, covered by insurance, and said total assessment shall be equal to the cost of said repair which shall include the costs of the Management Firm's personnel and overhead, materials and equipment, and any and all other contractors, subcontractors, or materialmen as are required. Should the loss be covered by insurance, the proceeds thereof shall be applied as a credit against the total costs of said repair and restoration in such proportions as hereinbefore set forth in this paragraph. It shall be presumed that the first monies disbursed in payment of costs of repair and restoration, shall be from insurance proceeds, where such are received, and then from assessments collected, and, should there be a surplus of such funds, the said surplus shall be distributed to or on behalf of the Unit Owners, as provided in the aforesaid Declaration of Condominium.

(T) A schedule is attached hereto as Exhibit A, which schedule indicates how often the Management Firm will perform the various services referred to in this Agreement and said schedule further indicates the method for determining the amount or cost of each service. Said schedule also specified the minimum number of personnel to be employed by the Management Firm.

6. Notwithstanding the delegation by the Association to the Management Firm of its power to determine and collect assessments and maintenance fees during the term of this Agreement, the

Association retains the power to make those assessments as are specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the By-Laws which are attached thereto as Exhibit No. 2.

7. The Management Firm shall apply assessments and maintenance fees collected as it determines in its sole discretion as to those items specified in the By-Laws of the Association including the Management Firm's fee and its overhead and expenses, which shall be deemed common expenses. The Management Firm, during the term of this Agreement, may file a lien against a Unit Owner's Condominium Parcel should he fail to pay his assessments or maintenance fee as required and provided in the Declaration of Condominium to which this Agreement is attached and Exhibits attached to said Declaration, and take such other action as provided in said documents, either in its name or in the name of or as agent of the Association whose name appears at the end of this instrument. The Management Firm may render statements as to the current status of a Unit Owner's assessments or maintenance fees. In the case of a Unit committed to Interval Ownership, any lien against an Owner of Unit Weeks in such Unit, shall be limited to the Unit Weeks owned by the defaulting Owner and shall, in no case, be filed so as to encumber the Unit Weeks owned by any other Owner in such Unit.

8. The Association shall aid and assist the Management Firm in any reasonable manner requested by the Management Firm as to the collection of assessments and maintenance fees, and the said Association shall further aid and assist the Management Firm in any reasonable manner required by the Management Firm so as to simplify the method of collecting the assessments and maintenance fees, due from Unit Owners.

9. It is specifically understood that the Management Firm does not undertake to pay common expenses from its own funds and shall only be required to perform its services and make disbursements to the extent that, and so long as, payments received from assessments and maintenance fees, or other revenue, if any, of the Association whose name appears at the end of this instrument, are sufficient to pay the costs and expenses of such services and the amounts of such disbursements. If it shall appear to the Management Firm that the assessments, maintenance fees, and other revenue, if any, of the said Association and its members are insufficient, the Management Firm shall forthwith determine such additional assessment or maintenance fee as is required and advise the said Association and its members.

10. It is specifically understood and agreed that the Management Firm shall perform all of the services required of it hereunder at no cost and expense whatsoever to itself, but solely at the cost and expense of the Association and its members. As compensation, fee or profit for its services hereunder, the Management Firm shall receive a net fee, free from all charges and expenses, of fifteen (15%) percent of the common expense assessment, or in the case of a Unit committed to Interval Ownership, seven dollars and twenty cents (\$7.20) per Unit Week, per year, such amount to be designated the "Management Fee". The Management Fee shall be taken into consideration in setting the common expense and maintenance fee assessments. The Management Firm's fee from each Condominium Unit or Unit Weeks shall commence as of the first day of the month following the date of a Deed from the Developer to the initial purchaser. The Management Fee is subject to renegotiation during each year of this Agreement.

11. The Association shall not interfere nor permit, allow or cause any of the Officers, Directors or members to interfere with the Management Firm in the performance of its duties or the exercise of any of its powers hereunder.

12. The Management Firm shall not be liable to the Association and its members, for any loss or damage not caused by the Management Firm's own gross negligence or willful misconduct, and said Association and its members will and do hereby indemnify and save harmless the Management Firm from any such liability for damages, costs and expenses arising from injury to any person or property in, about and in connection with the Condominium specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, from any cause whatsoever, unless such injury shall be caused by said Management Firm's own gross negligence or willful misconduct.

13. The Association on behalf of its members, or the Management Firm, shall both have the right to assign this Agreement as herein set forth. The Association may assign its right, title and interest herein to another Condominium Association operating and existing under the laws of the State of Florida, and the Management Firm may assign its right, title and interest herein to another management firm operating and existing under the laws of the State of Florida. However, said assignment shall not be valid unless and until the assignee thereunder expressly assumes and agrees, in writing to perform each and every covenant and term of this Agreement. The said Agreement shall be duly recorded in the Public Records of the County wherein the Condominium is located and an executed duplicate of said assignment shall be delivered to the other party of this Agreement by certified mail or its equivalent. The Management Firm may also sub-contract all/or portions of its duties and powers under this Management Agreement.

14. The Management Firm shall be authorized to assess a Condominium Unit Owner for those items of special assessments subject to the approval of the Board of Directors, as set forth in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the Exhibits attached to said Declaration, and in this Agreement - i.e., maintenance, repairs or replacements caused by the negligence or misuse by a Unit Owner, his family, servants, guests or invitees, or lessees; or failure of a Unit Owner to maintain those portions of his Condominium Unit and Limited Common Elements assigned to his Unit, as he is required to repair and maintain; or violation of the provisions of the aforesaid Declaration of Condominium and Exhibits attached thereto which require the removal of same by the Management Firm and/or which increase the costs of maintenance and/or repair upon the Management Firm, or increase insurance rates and premiums, etc.

15. The power and authority of the Association to amend the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the Exhibits attached to said Declaration, is subject to the specific provisos applicable thereto set forth in the aforesaid instruments.

16. Should any dispute arise as to the rights, powers and duties of any of the parties under this Agreement other than the Association's right to terminate this Agreement pursuant to F.S. 718.302, and said dispute cannot be amicably settled and resolved between the parties, then either party shall have the right to submit the matter in controversy for arbitration under the applicable Rules of The American Arbitration Association or its successor. The Association and the Management Firm agree that the arbitration shall take place in Lee County, Florida, and shall be governed by Florida law. The award rendered by the Arbitrator(s) shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction

thereof. The Arbitrator(s) shall have the right to assess costs and attorneys' fees in such amount and against such party as is determined just and proper under the circumstances.

17. No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same covenant.

18. Time is of the essence in every particular, and especially where the obligation to pay money is involved.

19. No modification, release or discharge or waiver of and provision hereof shall be of any force, effect or value, unless in writing, signed by the parties to this Agreement - i.e., the Management Firm and the Association or their respective successors or assigns.

20. This instrument, together with the Declaration of Condominium to which this Agreement is attached, and the Exhibits attached to said Declaration, including this Agreement, constitute the entire agreement between the parties hereto, as of the date of execution hereof, and neither has been induced by the other by representations, promises or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or understandings whatsoever, in any way touching the subject matter of this instrument, or the instruments referred to herein, which are not expressly contained therein.

21. The invalidity in whole or in part of any covenant, promise or undertaking, or any section, sub-section, sentence, clause, phrase or word, or of any provision of this Agreement or the Exhibits attached hereto, and the Declaration of Condominium to which this Agreement is attached and the Exhibits attached to said Declaration, shall not affect the validity of the remaining portions thereof. The provisions of this Agreement shall be paramount to the Condominium Act as to those provisions where permissive variances are permitted; otherwise the provisions of said Condominium Act shall prevail and shall be deemed incorporated herein.

22. The definitions of the words, terms, phrases, etc., as provided in Article I, of the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, are incorporated herein by reference and made a part hereof, and unless the context otherwise requires, said definitions shall prevail.

23. The words, "Condominium Association", "member(s)", "Unit Owner(s)" and "Parcel Owner(s)", wherever and whenever used herein, shall include the singular and plural thereof, and the use of any gender shall include all genders, wherever the same shall be appropriate. The term, "Condominium Parcel", or "Condominium Unit", or "Unit", or "Parcel", or "Unit Weeks", or "Unit committed to Interval Ownership", or "Interval Ownership", or "Parcels" and the Owners thereof shall be defined Pursuant to the Declaration of Condominium to which this Agreement is attached, and same are Condominium Parcels and/or Units of such Condominium as is created by the aforesaid Declaration of Condominium, or ownership or parts of such Parcels or Units.

24. When either party hereto, and the Association's members, desire to or are required to give notice unto the other, or others, in connection with and according to the terms of this Agreement, such notice shall be given to the Association, its members, and the Management Firm, as provided in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4.

25. If the Association or its members, shall interfere with the Management Firm in the performance of its duties and exercise of its powers hereunder, or if the said Association shall fail to promptly do any of the things required of it hereunder, then the Management Firm - fifteen (15) days after having given written notice to said Association of said default by delivering said notice to any officer of the Association, or in their absence, to any member of the said Association, may declare this Agreement in default unless such default be cured by the said Association within fifteen (15) days after such notice. Upon default, the Management Firm may, in addition to any other remedy given it by this agreement or in law or in equity, bring an action against the said Association and its members for damages and/or specific performance and/or such other rights and remedies as it may have, and the said Association and its members shall be liable for the Management Firm's reasonable attorneys' fees and costs incurred thereby. All of such rights of the Management Firm upon default shall be cumulative and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

26. Failure by the Management Firm to substantially perform its duties and obligations under this Agreement for a continuous period of forty five (45) days after written notice of default from the Association specifying the default complained of shall be grounds for the said Association's cancellation of this Agreement.

27. If the Condominium specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, shall be terminated, as is provided in its Declaration of Condominium, then each of the Condominium Unit Owners shall thereby become a tenant in common and shall, as to his separate interest, continue to be a party to this Agreement and bound by the provisions hereof, and the Management Firm shall manage such interest pursuant to the Provisions of this Agreement as the nature of such interest and the context of this Agreement shall permit.

28. It is specifically recognized that the Developer of Seawatch On-the-Beach, a Condominium, or some or all of the persons comprising the original Board of Directors of the Association, are or may be stockholders, officers or directors of the Management Firm or may have some other financial or ownership interest in the Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate this Management Agreement, in whole or in part.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, and have caused these presents to be signed respectively by their proper Officers, and their respective Corporate Seals have been duly affixed, this day of , 19 .

Signed, sealed and delivered
in the presence of:

MARINER PROPERTY MANAGEMENT,
INC., a Florida corporation

By: _____ (SEAL)

Attest: _____ (SEAL)

"MANAGEMENT FIRM"

SEAWATCH ON-THE-BEACH CONDO-
MINIUM ASSOCIATION, INC.

By: _____ (SEAL)

Attest: _____ (SEAL)

"ASSOCIATION"

STATE OF FLORIDA)
)
 SS:
)
 COUNTY OF

BEFORE ME, the undersig ed authority, personally appeared
 and to
 me well known to be the persons described in and who executed the
 foregoing instrument as President and Secretary of MARINER
 PROPERTY MANAGEMENT, INC., a Florida corporation and they ac-
 knowledged before me that they executed such instrument as such
 Officers of said Corporation and that the Seal affixed thereto is
 the Corporate Seal of said Corporation, and that same was affixed
 to said instrument by due and regular Corporate authority, and
 that said instrument is the free act and deed of said Corporation.

WITNESS my hand and official seal, at the County and State
 aforesaid, this day of , 19 .

(SEAL)
 Notary Public, State of
 Florida

My Commission Expires:

STATE OF FLORIDA)
)
 SS:
)
 COUNTY OF LEE

BEFORE ME, the undersigned authority, personally appeared
 Allen G. Ten Broek and Timothy R. Bogott, to me well known to be
 the persons described in and who executed the foregoing instrument
 as President and Secretary respectively, of SEAWATCH ON-THE-BEACH
 CONDOMINIUM ASSOCIATION, INC., a Florida Corporation not-for-
 profit, and they severally acknowledged before me that they
 executed such instrument as such officers of said Corporation, and
 that the Seal affixed thereto is the corporate seal of said
 Florida Corporation, and that same was affixed to said instrument
 by due and regular corporate authority, and that said instrument
 is the free act and deed of said Corporation.

WITNESS my hand and official seal, at the County and State
 aforesaid, this day of , 19 .

(SEAL)
 Notary Public, State of
 Florida

My Commission Expires:

EXHIBIT A

The MANAGEMENT FIRM shall employ a minimum of one (1) part time employee to perform and/or supervise the performance of the services of the MANAGEMENT FIRM pursuant to the MANAGEMENT AGREEMENT.

<u>Services to be performed and/or supervised by Management Firm pursuant to paragraph 5</u>	<u>To Be Performed</u>	<u>Cost Basis</u>
Hire & supervise necessary employees to maintain and operate condominium property	As Required	Actual Cost Incurred
Maintain & repair condominium property	As Required	Actual Cost Incurred
Promulgate rules & regulations for the Condominium property	Annually More often if necessary	Included in Management Fee
Initiate necessary action to force residents to comply with rules and regulations, statutes, laws and ordinances	As Required	Actual Cost Incurred
Purchase tools, equipment and supplies necessary to maintain and operate the condominium property	As Required	Actual Cost Incurred
Keep insurance in force	As Required	Actual Cost
Maintain Association's financial records, books and accounts	Quarterly More often if necessary	Actual Cost Incurred
Maintain records to describe services hereunder	Quarterly More often if necessary	Included in Management Fee
Prepare operating budget for condominium property	Annually	Included in Management Fee
Maintain and replace personal property in Units committed to Interval Ownership	As Required	Actual Cost Incurred

Services to be performed
and/or supervised by
Management Firm pursuant
to paragraph 5

	<u>To Be Performed</u>	<u>Cost Basis</u>
Collect all funds and maintain bank accounts	As Required	Actual Cost Incurred
Attend meetings of Unit Owners and Board of Directors	As Required	Included in Management Fee
Enforce rules and regulations	As Required	Actual Cost Incurred
Cause alterations and/or additions to be made to the condominium property	As Required	Actual Cost Incurred
Retain and employ persons, corporations, firms and professionals to perform duties	As Required	Actual Cost Incurred
Make and collect special assessments	As Required	Actual Cost Incurred

The foregoing only relates to the services supervised or performed by the Management Firm for and in consideration of the Fee paid it under the Management Agreement. For the estimated cost of maintaining, operating and administering the Condominium, reference should be made to the budget for the Condominium and the Condominium Association.

EXHIBIT NO. 5, TO DECLARATION

PERCENTAGE OF OWNERSHIP

EACH UNIT WITHIN THE CONDOMINIUM SHALL HAVE
A 1/42ND INTEREST IN AND TO THE COMMON ELEMENTS
AND COMMON SURPLUS, AND SHALL BE RESPONSIBLE
FOR 1/42ND OF THE COMMON EXPENSES OF THE CON-
DOMINIUM.

EXHIBIT NO. 6, TO DECLARATION

PERCENTAGE INTEREST IN UNITS

Each Condominium Unit is identified by number and is delineated on the Survey Exhibits collectively identified as Exhibit No. 1, to the Declaration of Condominium to which this Exhibit No. 6, is attached.

In the case of a Unit committed to Interval Ownership, each Owner of Unit Weeks in said Unit will own in remainder, a percentage share of the Unit and the percentage interest assigned to the Unit by Exhibit No. 5, hereof according to the following schedule:

<u>Unit Week Numbers Owned</u>	<u>Percentage Share in Remainder For Each Unit Week Owned</u>
1 - 51	1.9165
52	2.2585

CONSENT

The undersigned, MELLON BANK, N.A., A National Banking Association, having its principal offices at Mellon Square, Pittsburgh, Pennsylvania, 15230, the owner and holder of that certain Mortgage and Security Agreement given by HI-AT DEVELOPMENT, INC., A Florida Corporation, which mortgage is dated June 15, 1981 and filed for record in Official Record Book 1521 at Page 855 of the Public Records of Lee County, Florida, hereby evidences its Consent to the annexed Declaration of Condominium of:

SEAWATCH ON-THE-BEACH
A CONDOMINIUM

IN WITNESS WHEREOF, the undersigned has executed this Consent this 1st day of February, 1982.

MELLON BANK, N.A.,
A National Banking Association

By: Richard T. McCarter
Richard T. McCarter, Mortgage Officer

STATE OF PENNSYLVANIA)

) ss.:

COUNTY OF ALLEGHENY)

BEFORE ME, the undersigned authority, personally appeared Richard T. McCarter, to me well known to be the person described in and who executed the foregoing instrument as Mortgage Officer of MELLON BANK, N.A., a National Banking Association, and he acknowledged before me that he executed such instrument as such officer of said corporation, and that the seal affixed thereto is the corporate seal of said corporation, and that it was affixed to said instrument as the free act and deed of said corporation.

WITNESS my hand and official seal at the State and County aforesaid, this 1st day of February 1982.

My Commission expires:
JAMES HENDERSON, Notary Public
Pittsburgh, Pennsylvania
My Commission Expires March 15, 1982

James Henderson
Notary Public

(Notary Seal)

RECORDED
FEB 19 9 45 AM '82
LEE COUNTY
RECORDS & CLERK
COUNTY