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DECLARATION OF CONDOMINIUM
OF
HARBOURSIDE SUNSETS, A CONDOMINIUM

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HARBOURSIDE SUNSETS, A CONDOMINIUM

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ARTICLE I

SUBMISSION STATEMENT

900 PENINSULA DRIVE INVESTORS, L.L.C., a Florida limited liability company (hereinafter called the "Developer") is the owner, in fee simple, of the real property legally described in Exhibit "A" attached hereto. Developer does hereby submit the real property described in Exhibit "A" attached hereto, the improvements thereon and the rights and easements appurtenant thereto to condominium ownership pursuant to Chapter 718, Florida Statutes and declares same a condominium known as HARBOURSIDE SUNSETS, a Condominium (the "Condominium"). Construction of the Condominium has already been completed. The Condominium is a conversion of a previously existing rental apartment complex which was not constructed by Seller and accordingly the Condominium is not new construction. Attached to the prospectus for HARBOURSIDE SUNSETS as Exhibits A and B is a statement of condition of the existing building and a termite inspection report.

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitude upon the land, as the case may be, and shall be binding on each unit owner, and each unit's owners heirs, personal representatives, successors and assigns. Both the burdens imposed and the benefits provided shall run with the title to each Unit and their appurtenant interest in the common elements as defined herein.

ARTICLE II

DEFINITIONS

1. "Act" means and refers to the Condominium Act of the State of Florida in effect on the date of recordation of this Declaration of Condominium.
2. "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as same may be amended from time to time.
3. "Assessment" means the share of the funds required for the payment of common expenses which from time to time are assessed against a unit owner.
4. "Assigns" means any person to whom some or all rights of a Unit Owner have been validly transferred by sale, lease, mortgage, or otherwise.

5. "Association" or "Corporation" means HARBOURSIDE SUNSETS CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, the entity responsible for the operation of the Condominium.

6. "Association Property" means that property, real or personal, the title or ownership of which is vested in the Association for the use and benefit of its Members.

7. "Board," "Directors," or "Board of Administration" means the Board of Directors responsible for the administration of the Association.

8. "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.

9. "By-Laws" means the By-Laws of the Association.

10. "Committee" means a group of Board Members, Unit Owners, or Board Members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the proposed annual budget or to take action on behalf of the Board.

11. "Common Elements" means the portion of the Condominium Property not included in the Units, and includes without limitation the following:

A) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to Units and the Common Elements;

B) Easement of support in every portion of a Unit which contributes to the support of a building;

C) The Property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements;

D) Any other parts of the Condominium Property designated as Common Elements in this Declaration.

12. "Common Expenses" means: (1) expenses of administration and management of the Condominium Property; (2) expenses of maintenance, operation, repair or replacement of the common elements; (3) expenses declared common expenses by the provisions of this Declaration or the By-Laws; (4) charges and expenses incurred by the Association pursuant to any bulk cable television agreement; and (5) any valid charge against the Condominium as a whole.

13. "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Condominium, (including, but not limited to, assessments, rents, profits and revenues) over and above the amount of money expended as common expenses.

14. "Common Interest" means the proportionate undivided interest in fee simple in the Common Elements and the Common Surplus appurtenant to a Unit as expressed in the Declaration.

15. "Condominium" means HARBOURSIDE SUNSETS, A CONDOMINIUM which is a form of ownership of real property created pursuant to the Act and under this Declaration providing for ownership by one or more persons or entities of improvements together with an undivided interest in Common Elements appurtenant to each Unit.

16. "Condominium Documents" means this Declaration and all Exhibits attached hereto as the same, from time to time, may be amended.

17. "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit.

18. "Condominium Property" means and includes the land submitted to condominium ownership, whether or not contiguous, all improvements thereon, exclusive of all wires, cables and equipment comprising the cable television system, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

19. "Condominium Unit" or "Unit" means that portion of the Condominium Property which is to be subject to exclusive ownership; said Unit being a unit space identified on the Plot Plan, Survey and Graphic Description attached hereto as Exhibit "B".

20. "Declaration" or "Declaration of Condominium" means this instrument, and all Exhibits attached hereto, as same may from time to time be amended.

21. "Developer" means 900 PENINSULA DRIVE INVESTORS, L.L.C., a Florida limited liability company, its successors, nominees, affiliates and such of its assigns as to which the rights of Developer hereunder are specifically assigned, all of which shall create or offer for sale or lease, Condominium Parcels in the Condominium in the ordinary course of business, but expressly excluding all Owners and lessees acquiring Units for their own or their families own occupancy.

22. "Institutional Lender" or "Institutional Mortgagee" means the Developer, a bank, savings and loan association, insurance company, a generally recognized and licensed mortgage company, real estate investment trust, public company pension fund, public company pension trust, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or any other generally recognized institutional-type lender or its loan correspondent, or any agency of the United States Government or of the State of Florida or any lender providing funds to the Developer for the purpose of constructing improvements upon the Condominium Property (and such lender's successors and assigns) holding a mortgage encumbering a Unit.

23. "Institutional Mortgage" means a bank, savings and loan association, insurance company, mortgage company, real estate or mortgage investment trust, pension fund, private equity fund, an agency of the United States Government, mortgage banker, a government sponsored entity,

the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), any lender advancing funds to Developer secured by an interest in any portion of the Condominium Property or any other lender generally recognized as an institutional lender, or the Developer, holding a first Mortgage on a Unit or Units.

24. "Limited Common Elements" means those portions of the common elements which are reserved for the use of a certain Unit or certain Units to the exclusion of all other Units.
25. "Member of the Association" means the owner or co-owner of a Unit.
26. "Owner" or "Unit Owner" means a record owner of legal title to a condominium parcel.
27. "Residential Units" means all Units in the Condominium.
28. "Rules and Regulations" means guidelines adopted by the Association concerning the use of the Condominium, as they may be amended from time to time.
29. "Special Assessment" means any assessment levied against any Unit Owner(s) other than the assessment provided for in the annual budget.
30. "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
31. "Utility Services" means, but shall not be limited to, cable television, electric power, garbage and sewage disposal, water, pest control service (pertaining to both Units and Common Elements) and all other public service and convenience facilities.

ARTICLE III

UNITS; APPURTENANCES; LIMITED COMMON ELEMENTS; POSSESSION AND ENJOYMENT

- A. A Unit is a separate parcel of real property, the ownership of which may be in fee simple, or any other estate in real property recognized by law.
- B. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:
 1. Upper Boundaries - - the horizontal plane of the undecorated finished ceiling.
 2. Lower Boundaries - - the horizontal plane of the undecorated finished floor.
- C. The perimetrical boundaries of the Unit shall be the vertical planes of the undecorated

finished interior of the walls bounding the Unit extending to intersection with each other and with the upper and lower boundaries. Where there is an aperture in any perimetrical boundary including, but not limited to windows and doors, the vertical boundary shall be extended at all such places, at right angles, to the dimension of such aperture, so that the perimetrical boundary at such places shall be coincident with the exterior unfinished surface of such aperture, including the framework thereto. Exterior walls made of glass or glass fixed to metal framing, exterior windows and frames, exterior glass sliding doors, frames and casings, shall be included within the Unit and shall not be deemed to be a common element.

D. Where a patio, greenhouse, terrace, loggia, porch, stairway or other portion of the building or any fixture attached to the building serves only the Unit, it shall be considered a part of that Unit and not a limited common element.

E. Each Unit shall not be deemed to include the undecorated and/or unfinished surface of the perimeter walls, floors and ceiling surrounding the Unit, nor shall a Unit be deemed to include pipes, wires, conduits or other public utility lines running through the Unit which are utilized for or serve more than one Unit, which items are by these presents hereby made a part of the common elements. A Unit shall be deemed to include the interior walls and partitions which are contained in a Unit and also shall be deemed to include the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings of the Unit, including plaster, paint, wallpaper, etc.

F. There shall pass with each Unit as an appurtenance thereto:

1. An undivided interest in the common elements.
2. An undivided share in the common surplus.
3. An exclusive easement for the use of the air space occupied by the Unit if it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easements shall be terminated automatically in any air space which is vacated from time to time.

Such other easements, rights or privileges which, pursuant to the provisions to this Declaration and of law; are deemed appurtenances to the Unit.

Membership for the unit owner in the Association, with the full voting rights pertaining thereto, subject to the rights and obligations of membership therein.

G. The owner of a Unit is entitled to the exclusive possession of his Unit. Each owner of a Unit shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of owners or other Units. There shall be a joint use of the common elements (other than limited common elements) and a joint mutual easement for that purpose is hereby created.

H. Each owner of a Unit shall pay the cost of maintaining all sliding glass doors contained within his Unit, if any, and the replacements or repair of windows and window operators, screening, wiring, electrical outlets and fixtures which are wholly within the Unit. Rules and regulations regarding the uniform maintenance and appearance of all exterior facing parts of the improvements may be promulgated, from time to time, by the Association.

I. The Association, through its Board of Administration, is hereby authorized to contract for the parking needs of the unit owners and their lessees, invitees, guests, nominees and family members, at such time or times as may be determined by the Board of Administration.

J. No Unit may be partitioned or subdivided, except in accordance with the provisions of this Declaration of Condominium.

ARTICLE IV

RESTRAINT UPON SEPARATION AND PARTITION OF LIMITED COMMON ELEMENTS AND COMMON ELEMENTS.

A. The limited common elements and the undivided share in the common elements which are appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described.

B. The undivided share in the common elements and the limited common elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

C. The undivided share in the common elements and in the limited common elements appurtenant to each Unit shall remain undivided, and no action for partition shall lie.

ARTICLE V

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.

Common elements includes within its meaning the following items:

A. All of the real property, other than the Units, all of which are more particularly described and set forth in the Plot Plan, Survey and Graphic Description attached hereto as Exhibit "B". Common elements shall include easements through Units for all conduits, pipes, ducts, plumbing, wiring, and all other facilities for the furnishing of utility services to Units and the common elements and easements of support in every portion of a Unit which contributes to the support of the improvements, and shall further include all personal property held and maintained for the joint use and enjoyment of the unit owners, exclusive of all wires, cables and equipment comprising the cable television service.

B. Installations for the furnishing of utility services to more than one Unit or to the

common elements or to a Unit other than the Unit containing the installation, exclusive of installments for the furnishing of cable television service.

C. Easements for encroachment by the perimeter walls, ceilings and floors surroundings each Unit caused by minor inaccuracies in building or rebuilding which now exist or hereafter exist, and such easements shall continue until such encroachment no longer exists.

D. Easements for overhanging troughs or gutters, downspouts, and the discharge therefrom of rain water and the subsequent flow there over Units.

E. A non-exclusive easement for ingress and egress over the walk and other right-of-way of the common elements as shall be necessary to provide access to the public ways to and from the Units.

F. The limited common elements shall not include any balcony adjoining any unit.

ARTICLE VI

CONDOMINIUM PROPERTY AND IDENTIFICATION OF UNITS.

A. Annexed hereto as Exhibit "B" is a survey of the real property being submitted to the condominium form of ownership, together with a plot plan and graphic description of the improvements in which the Units are located.

B. The identification, location and dimension of each Unit, the limited common elements and the common elements appear on the aforescribed Exhibit. Each Unit has been given a designation as any other Unit. Each Unit is described in the Exhibit in such a manner that there can be determined therefrom the identification, location and approximate dimensions of each Unit and the limited common elements and common elements appurtenant thereto. The legend and notes contained in the Exhibit are incorporated herein and made a part hereof by reference.

ARTICLE VII

OWNERSHIP OF COMMON ELEMENTS AND SHARES OF COMMON SURPLUS

The owner of each Unit shall own a share and an interest in the Condominium Property which is appurtenant to unit owner's Unit which includes, but is not limited to, the following items:

A. Common Elements - - The undivided shares stated as percentages, in the common elements appurtenant to each of the Units as set forth on the schedule attached hereto and made a part hereof by reference as Exhibit "C"; and

B. Common Surplus - Any common surplus of the Association in the same percentage as the common elements appurtenant to each Unit are owned, as set forth in the Exhibit. This

ownership, however, does not include the right to withdraw or require payment or distribution of said common surplus.

C. The ownership of common elements assigned to each residential unit shall be based upon the total square footage of each residential unit in uniform relationship to the total square footage of each other residential unit in the condominium.

ARTICLE VIII

AMENDMENT TO DECLARATION.

A. Except as herein or elsewhere provided, this Declaration may be amended in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

2. An amendment may be proposed by either a majority vote of the Board of Administration of the Association or by the vote of members holding not less than 51% of the total votes of the Association. Directors and members of the Board of Administration not present in person or by proxy at the meeting considering the amendment may submit in writing his or her agreement or disagreement with any action taken at the meeting. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum. The writing must be delivered to the Secretary of the Association at or prior to the meeting. Except as elsewhere provided, a resolution adopting the proposed amendment must be approved by either:

The vote of not less than 66-2/3% of the Board of Administration and the vote of members holding not less than 66-2/3% of the total votes of the Association or

The vote of members holding not less than 80% of the total votes of the Association.

B. No Amendment shall change the configuration of any Unit, nor a Unit's proportionate share of the common elements, the common expenses or common surplus, nor the voting rights appurtenant to any Unit, unless the record owners thereof join in the execution of the Amendment, and be authorized by the vote of members holding not less than fifty one (51%) percent of the total votes of the Association.

C. No amendment shall be passed which shall impair or prejudice the rights and priorities of Institutional Mortgagees, nor shall any amendment be adopted which would modify any provisions of this Declaration which are for the benefit of Institutional Mortgagees, without the consent of the Institutional Mortgagee having the highest dollar indebtedness secured by the mortgages encumbering Units in the Condominium.

D. The Developer reserves the right to amend the Declaration and its Exhibits so as to correct any omissions or errors (including scrivener's or surveyor's errors), so long as such amendments do not materially and adversely affect the rights of unit owners or mortgagees. Such amendment need be executed and acknowledged by the Developer only and be authorized by the vote of members holding not less than 51% of the total votes of the Association.

In addition, the Developer reserves the right to amend this Declaration pursuant to the provisions herein, provided said amendment is in accordance with the Act.

E. In the event it shall appear that there is an error or omission in this Declaration or in the Exhibits attached hereto, then and in that event, the Association may correct such error and/or omission by amendment to this Declaration in the following manner:

1. Notice of the subject matter of a proposed amendment to cure a defect, error or omission shall be included in the notice of any meeting at which such amendment is to be considered:

2. A resolution for the adoption of such proposed amendment may be proposed by either the Board of Administration of the Association or by the members of the Association. Directors and members of the Board of Administration not present in person or by proxy at the meeting considering the amendment may submit in writing his or her agreement or disagreement with any action taken at the meeting. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum. The writing must be delivered to the Secretary of the Association at or prior to the meeting. Such approvals to amend this Declaration must be either by:

a) The vote of not less than 66 2/3% of the Board of Administration and the vote of the members holding not less than 10% of the total votes of the Association; or

b) The vote of members holding not less than 25% of the total votes of the Association; or

c) In the alternative, an amendment may be made by an agreement signed and acknowledged by not less than 80% of all units owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Volusia County, Florida.

F. Until the last Unit within the Condominium is conveyed by the Developer, no amendment to this Declaration shall be made or shall be effective without the written consent of the Developer, if such amendment would adversely affect, in Developer's sole discretion, the sale, marketing and promotion of any Units by the Developer.

G. No provision of this Declaration shall be revised or amended by reference to its title number only. Proposals to amend existing provisions of this Declaration shall contain the full text

of the new provisions to be amended: new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision ___ for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

H. Except as may be otherwise provided in this Declaration, a copy of each amendment shall be attached to a certificate executed by the President or Vice President of the Association, certifying that the amendment was duly adopted. Each amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Volusia County, Florida.

ARTICLE IX

THE ASSOCIATION: ITS POWERS AND RESPONSIBILITIES.

A. The Condominium is governed and administered by HARBOURSIDE SUNSETS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation. A copy of the Articles of Incorporation of the Association is annexed hereto and made a part hereof as Exhibit "D". Amendments to the Articles of Incorporation shall be valid when adopted in accordance with its provisions and filed with the Secretary of State or as otherwise required by Chapter 617, Florida Statutes, as same may be amended from time to time. Article VIII of this Declaration, regarding amendments to this Declaration, shall not pertain to amendments to the Articles of Incorporation, the recording of which shall not be required among the public records to be effective unless such recording is otherwise required by law. No amendment to the Articles of Incorporation shall, however, change the size of any Unit nor the share of common elements, common expenses or common surplus appurtenant to a Unit nor the voting rights appurtenant to a Unit unless the record owner or owners thereof, all record owners of liens or mortgages encumbering such Unit or Units, and at least a majority of all the record owners of all other Units shall join in the execution of such amendment.

B. The powers and duties of the Association shall include those set forth in the By-Laws annexed hereto and made a part hereof as Exhibit "E" but, in addition thereto, the Association shall have all of the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including:

1. The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or of any portion of a Unit to be maintained by the Association or as may be necessary to prevent damage to the common elements or to a Unit or Units.

2. The power to make and collect assessments, regular and special, and to lease, maintain, repair and replace the common elements.

3. The duty to maintain accounting records prepared according the normally accepted accounting practices, which records shall be open to inspection by unit owners at reasonable times during normal business hours.

4. The power to enter into contracts with others, for valuable consideration, for maintenance and management, including normal maintenance and repair of the common elements. The duty and responsibility to maintain and preserve the landscaping, gardening, painting, repairing and replacement of the common elements shall not relieve the unit owner of unit owner's personal responsibility to maintain and preserve the interior of his unit and the limited common elements appurtenance thereto, and to paint, clean, decorate, maintain and repair his/her Unit.

5. The power to adopt reasonable rules and regulations for the maintenance and conservation of the Condominium Property and for the health, comfort, safety and welfare of the unit owners.

C. 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 an institutional Mortgage encumbering any Unit(s) or which would change the provisions of the By-Laws with respect to the rights of Institutional Mortgagees, without the written approval of all institutional mortgagees of record.

D. Each unit shall be entitled to one vote to be cast in accordance with the provisions of the Articles of Incorporation and the By-Laws of the Association.

E. The Association or its designees shall maintain such records as are required by Section 718.111, Florida Statutes.

F. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the Association shall give notice of the exposure within a reasonable time to all unit owners and to all institutional mortgagees who may be exposed to the liability, so that such unit owners and/or such institutional mortgagees shall have the right to intervene and defend.

ARTICLE X

MAINTENANCE, ALTERATIONS AND IMPROVEMENTS.

The responsibility for the maintenance of the Condominium Property and restrictions upon its alterations and improvement shall be as follows:

A By the Association: The Association shall maintain, repair and replace at the

Association's own expense:

1. All common elements, save and except for limited common elements appurtenant to a Unit.
2. All portions of the Units (except interior wall surfaces) contributing to the support of the building, which portions shall include, but not be limited to, the outside walls of the building and load-bearing columns:
3. All conduits, ducts, plumbing, air-conditioning, wiring and other facilities for the furnishing of utility services which are contained in the portions of a Unit contributing to the support of the building or within the interior boundary walls, and all such facilities contained within a Unit which service part or parts of the Condominium other than the Unit within which contained.
4. All parking areas of the Condominium including, but not limited to, the parking spaces.
5. All property owned by the Association.

All incidental damage caused to a unit by such work shall be promptly repaired at the expense of the Association.

B. By the Unit Owner: The responsibilities of each unit owner shall be as follows:

1. To maintain, repair and replace, at unit owner's expense, all portions of the Unit except the portions to be maintained, repaired and replaced by the Association. Included within the responsibility of the unit owner shall be to maintain, repair and replace any limited common elements appurtenant to unit owner's Unit, all plate glass, sliding glass doors, windows, screens and doors opening into or onto the Unit. All such maintenance, repairs and replacements shall be done without disturbing the rights of other unit owners.
2. To maintain, repair, and replace at unit owner's expense, unit owner's individual air-conditioning and heating system located inside unit-owner's individual Unit.
3. Within the Unit, to maintain, repair and replace at unit owner's expense, all fans, stoves, refrigerators, dishwashers, washing machines, dryers, or other appliances or equipment, including all fixtures and/or their connections required to provide water, light, power, telephone, sewage, bath room plumbing fixtures and sanitary service to unit owner's unit. The floor and interior walls of any terrace or patio of a Unit shall be maintained by the unit owner at such unit owner's expense.
4. Within and without the unit, not to paint or otherwise decorate or change the appearance of any exterior portion of the building, including patios or terraces, or any stucco portion of the building. Unit owners may display one portable, removable United States flag in a respectful

way and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy Air Force, Marine Corps or Coast Guard.

5. To promptly report to the Association any defects or need for repairs, the responsibility for the remedy of which is that of the Association.

6. No unit owner shall make any alterations in the portions of the building which are to be maintained by the Association, or remove any portion thereof or make any additions thereto or do any work which, in the sole discretion of the Association, would jeopardize the safety or soundness of the building or impair any easement, without first obtaining approval from the Board of Administration of the Association.

C. Alterations and Improvement of Common Elements: There shall be no material alteration or substantial additions to the common elements, except as the same are authorized by the Board of Administration and ratified by the affirmative vote of members holding not less than 66 2/3% of the total votes of the Association. The cost of the foregoing shall be assessed as common expenses of the Condominium.

D. Alteration of Unit: No owner of a Unit shall make or cause to be made any structural modifications or alterations or replacements in unit owner's unit or the exterior doors of unit owner's unit, or in the water, gas, electrical, plumbing, air-conditioning equipment or utilities therein, without the consent of the Board of Administration of the Association, which consent may be withheld in the event the Board of Administration determines that such structural alteration, modification or replacement is aesthetically unacceptable and/or in the event the Board of Administration determines that such structural alteration, modification or replacement would in any manner endanger the structural soundness of the building. If the modification, alteration or replacement desired by an owner of a Unit involves the removal of any permanent interior partition, the Board of Administration may permit same if the same is not a load-bearing partition and if the same does not interfere with any common utility source. A unit owner making or causing to be made any structural modification, alteration or replacement to unit owner's unit agrees, and shall be deemed to have agreed, to hold the Association and all other unit owners harmless from any liability arising therefrom. No unit owner shall cause any improvements or changes to be made to the exterior of the building including, but not limited to painting, installation of electrical wires, television antennae, or air conditioning units which may protrude through the walls or roof of the building, or in any manner change the appearance of the exterior of the building or any portion of the building not totally within each Unit, without consent of the Board of Administration. No unit owner, other than the Developer and/or the agents of the Developer, or any other persons shall install upon the roof or exterior of the building or upon the common elements of the Condominium, any television antennae, radio antennae, electric, electronic, electro-mechanical or other communications device, decorative item or affixed furnishing, without the consent of the Board of Administration.

E. Liability of Unit Owner: Should a unit owner undertake unauthorized additions and modifications to his unit, or refuse to make repairs as required, or should a unit owner cause damage

to the Condominium Property, the Association shall have the right to avail itself of the remedies set forth in Section 718.303(1) and (3), Florida Statutes, which remedies include the levy of a reasonable fine, an action for damages or an action for injunctive relief.

F. Insurance Proceeds: Whenever any maintenance, replacement and repair of any items for which the owner of a Unit is responsible is made necessary by any loss covered by insurance maintained by the Association, the proceeds of the insurance received by the Association, or by the insurance trustee, shall be used for the purpose of accomplishing such maintenance, repair or replacement. The unit owner shall be required to pay all of the costs thereof that exceed the amount of the insurance proceeds.

ARTICLE XI

ENFORCEMENT OF MAINTENANCE

In the event the Owner of a Unit fails to maintain the Unit and the appurtenances thereto, as required above, the Association, the Developer, or any other unit owner shall have the right to proceed in a court of equity to seek compliance with the foregoing provisions.

Further, in the even a unit owner violates any of the provisions of Article X above, the Developer and/or the Association shall have the right to take any and all such lawful steps as may be necessary to remedy such violation.

ARTICLE XII

COMMON EXPENSES

A. Common expenses shall include expenses of the operation, maintenance, repair or replacement of the common elements (and those portions of the limited common elements to be maintained by the Association), costs of carrying out the powers and duties of the Association, and any other expenses designated as common expenses by the Association.

B. All costs of water, gas, trash and garbage collection and sewage service for the Condominium.

C. Common expenses shall be shared by each Unit in accordance with each Unit's respective interests in the common elements and in the common surplus, as set forth in Exhibit "C". The foregoing ratio of sharing common expenses and assessments shall remain, regardless of the purchase price of the Units or their locations.

ARTICLE XIII

ASSESSMENTS; LIABILITY, LIEN AND PRIORITY; INTEREST; COLLECTION

A. The Association, through its Board of Administration, shall have the power to fix and determine from time to time, a budget necessary to provide for the common expenses of the Condominium. A unit owner, regardless of how title is acquired, except as provided in Article XIV below, shall be liable for all assessments coming due while the owner of a unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the Unit being conveyed, up to the time of such voluntary conveyance.

B. The Board of Administration shall adopt a budget for the Association during the month preceding the fiscal year wherein the budget will take effect, which budget shall include a schedule of assessments to be paid by the unit owners.

C. Each unit owner shall be responsible for the payment of the assessments imposed against his Unit in an amount equal to the percentage of responsibility for payment of common expenses set forth in the Exhibit attached.

D. Regular assessments shall be paid by the unit owners on a monthly basis payable on the first day of each and every month.

E. Should the Association, through its Board of Administration, at any time determine that the assessments made are not sufficient to pay the common expenses, or, in the event of emergencies, the Board of Administration shall have the authority to levy and collect additional and/or special assessments to meet such needs of the Association.

F. The Board of Administration of the Association, in assessing for common expenses, shall (unless waived pursuant to applicable law) include therein a sum to be collected and maintained as a reserve fund for capital expenditures and deferred maintenance for any item for which the deferred maintenance expense or replacement cost is greater than \$10,000.00.

G. The Board of Administration of the Association, in assessing for common expenses, may include therein a sum to be collected and maintained as a general operating fund which shall be used to provide a measure of financial security during periods of stress. Such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessments by unit owners or a result of emergencies. This fund must be included in the operating portion of the budget.

H. All monies collected by the Association from assessments imposed against unit owners in this Condominium shall, unless the same is collected for the benefit of others, be the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of the provisions of this Declaration. All monies received from assessments imposed against unit owners in this Condominium may not be co-mingled with other monies held by the Association, provided, however, separate ledgers shall be maintained. All monies received by the Association from assessments imposed against unit owners in this Condominium shall be held for the benefit of the unit owners in this Condominium

and may only be expended for the benefit of this condominium. No unit owner shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his unit. Such funds shall not be subject to attachment or levy by a creditor or judgment creditor of a unit owner. When the owner of a unit shall cease to be a member of the Association, by the divestment of his ownership of such Unit by whatever means, the Association shall not be required to account to such owner for any share of the funds or assets of the Association. Reserves and operating funds of the Association shall not be commingled except for investment purposes.

I. Liability for assessments may not be avoided by abandonment of a unit, or by waiver of the use of any common elements or other property which a unit is entitled to use or enjoy.

J. Assessments that are not paid within five (5) days of when due shall bear interest from the date when due until paid at the rate of eighteen (18%) percent per annum. Additionally, the failure to pay any assessment within five (5) days from the date due shall entitle the Association to levy an administrative late fee, in addition to interest upon the delinquent assessment, in an amount not to exceed the greater of \$25.00 or five (5%) percent of each installment of the delinquent assessment, said administrative late fee to be imposed against the delinquent unit owner for each thirty (30) day period that the assessment remains delinquent. Payments made shall be applied to interest and administrative late fees first and then to the delinquent assessment. The Association shall furnish to any Institutional Mortgagee, upon its request, written notification of any default in assessment payments of the unit owner whose unit is encumbered by the Institutional Mortgage.

K. The Association is hereby granted a lien on each Unit, which lien shall secure the payment of all assessments, interest thereon, and reasonable attorneys fees incurred as an incident to the enforcement of said lien. The lien shall be effective, have priority and be collected as provided by the Act unless, by the provisions of this Declaration, such liens would have a greater priority or dignity, in which event the lien right in favor of the Association having the highest priority and dignity shall be the lien of the Association.

L. Liens for assessments may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property, as more fully set forth in the Act. The Association may bid at any sale and apply as a cash credit against its bid all sums due the Association covered by the lien being enforced. In any suit for the foreclosure of said lien, the Association, provided the unit owner has remained in possession of the Unit shall be entitled to petition a court of competent jurisdiction for payment of a reasonable rental from the owner of such Unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said Unit. In any suit for foreclosure, the holder of any and all mortgages encumbering the unit must be joined as a party to the foreclosure proceeding.

M. A first mortgagee who acquires title to the unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed. However, the first mortgagee's liability is limited to a period not exceeding six (6) months,

and in no event shall the first mortgagee's liability exceed one percent of the original mortgage debt. In no event shall the first mortgagee be liable for more than six months of the units' unpaid common expenses or assessments accrued before the acquisition of the title mortgagee to the unit by the mortgagee or one percent of the original mortgage debt, whichever amount is less, provided that the association has been joined as a party by the first mortgagee in the foreclosure litigation.

N. Inasmuch as the Association is authorized by the Declaration or By-Laws to approve or disapprove a proposed lease of a Unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

O. Within fifteen (15) days after receiving a written request from a Unit Owner, Purchaser or Mortgagee, the Association shall provide a certificate signed by an officer or agent of the association stating all assessments and other monies owed to the Association by the Unit Owner with respect to the Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. A summary proceeding pursuant to Florida Statute Section 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover a reasonable attorney's fees.

P. The assessments levied against each Unit Owner shall be payable at the main office of the Association in such installments and at such time as may be determined by the Board of Administration and as provided in the By-Laws. The payment of any such Assessment shall be in default if not paid to the Association on or before its due date.

Q. Claims of Lien:

- 1) The Association has a lien on each condominium parcel to secure the payment of assessments.
- 2) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The claim of lien shall secure all unpaid assessments which are due and which accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.
- 3) The assessments are collected to pay the common expenses of the condominium. However, the Association, acting through the Board, shall have the right to assign to Developer or to any Unit Owner(s) or third party its collection rights for the recovery of any unpaid assessments.

R. Notice of Contest of Lien:

- 1) By recording a notice in substantially the following form, a Unit Owner or his agent or attorney may require the Association to enforce a recorded claim of lien against his condominium parcel:

“Notice of Contest of Lien”

To: Harbourside Sunsets Condominium Association, Inc.
900 South Peninsula Drive
Daytona Beach, Florida

You are notified that the undersigned contests the claim of lien filed by you on _____, 20____, and recorded in Official Records Book _____ at Page _____, of the Public Records of Volusia County, Florida, and that the time within which you may file suit to enforce your lien is limited to ninety (90) days from the date of service of this notice.

Executed this _____ day of _____, 20____.

(Signature of Unit Owner or his Attorney.)

- 2) After notice of contest of lien has been recorded, the Clerk of the Circuit Court shall mail a copy of the recorded Notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and, shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the Association has ninety (90) days in which to file an action to enforce the lien; and if the action is not filed within the ninety (90) day period, the lien is void. However, the 90-day period shall be extended for any length of time that the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the Unit Owner or by an other person claiming an interest in the parcel.

ARTICLE XIV

**MAINTENANCE ASSESSMENTS WITH RESPECT TO
DEVELOPER OWNED UNITS - - MAINTENANCE GUARANTEE.**

During the period commencing from the date of recording of the first deed of conveyance to the date of which control of the Board of Administration of the Association is turned over to the unit

owners other than the Developer (the "Initial Guarantee Expiration Date"), the Developer will guarantee to all purchasers or other unit owners that assessments will not exceed \$127.30 per unit Type A, \$143.00 per unit Type B, and \$143.00 per unit Type C and in the event that any common expenses exceed the guaranteed amount, the Developer will pay those amounts in excess of guaranteed amount. For purposes of this paragraph, income to the Association other than assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Developer. After the Initial Guarantee Expiration Date, the Developer shall have the option of extending the guarantee for one (1) or more additional periods, (not to exceed three (3) additional periods) or one (1) year each (an "Additional Guarantee Period") as provided in Florida Statutes, Section 718.116(9), but may not change the level of assessments during the Additional Guarantee Period. The Developer shall be deemed to have automatically extended the guarantee, by an Additional Guarantee Period, unless the Developer notifies the Board of Administration of HARBOURSIDE SUNSETS CONDOMINIUM ASSOCIATION, INC. in writing of its election not to extend the guarantee for an Additional Guarantee Period. The Developer may also extend the guarantee for a definite period of time by written agreement with a majority of non-Developer unit owners. No funds received from unit owners payable to the Association or collected by the Developer on behalf of the Association, other than regular periodic Assessments for common expense as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above, shall be used for the payment of common expenses prior to the Guarantee Expiration Date. This restriction shall apply to funds, including, but not limited to, capital contributions or start-up funds collected from unit owners at closing.

ARTICLE XV

LIMITATION OF LIABILITY

A. The liability of the owner of a Unit for common expenses shall be limited to the amounts for which such unit owner is assessed from time to time in accordance with this Declaration and the By-Laws (including any interest, penalties, costs or fees provided for therein in the event of delinquency).

B. The owner of a Unit may be personally liable for acts or omission of the Association in relation to the use of the common elements, but only to the extent of such unit owner's pro rata share of the liability in the same percentage as such unit owner's interest in the common elements, and then in no case shall such liability exceed the value of the unit owner's Unit.

ARTICLE XVI

LIENS

A. Unless a unit owner has expressly requested or consented to work being performed or materials being furnished to unit owner's Unit, such furnishings of labor or materials may not be the basis for the filing of a mechanic's lien against same. No labor performed or materials furnished to the common elements shall be the basis for a lien thereon unless authorized by the Association,

in which event same may be the basis for the filing of a lien against all Units in the proportions for which the Units are liable for common expenses.

B. In the event a lien against two or more Units becomes effective, each unit owner thereof may relieve his Unit of the lien by paying the proportionate amount attributable to unit owner's Unit. Upon such payment, it shall be the duty of the lienor to release the lien of record against such Unit.

ARTICLE XVII

EASEMENTS

Each of the following are covenants running with the land of the Condominium, to wit:

A. Utility Services; Drainage: Easements are reserved under, through and over the Condominium Property as may be required for utility services, cable television service and drainage in order to serve the Condominium. A unit owner shall do nothing within or outside unit owner's Unit that interferes with or impairs the utility services and/or the cable television services using these easements. The Association or its designee shall have a right to access to each Unit to inspect same, to maintain repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility or other service facilities and common elements contained in the Unit or elsewhere in the Condominium Property, and to remove any improvements interfering with or impairing the utility services or easements herein reserved: provided that such right of access shall not reasonably interfere with the unit owner's permitted use of the Unit, and entry shall be made on not less than one day's notice, except in the event of an emergency.

B. Traffic: An easement shall exist for pedestrian traffic over, through and across sidewalks, driveways, paths, walks, halls, lobbies, elevators, and other portions of the common elements as may be from time to time intended and designated for such purpose and uses and for vehicular and pedestrian traffic over, through and across such portions of the common elements and limited common elements as may, from time to time, be paved and intended for such purpose; and such easements shall be for the use and benefit of unit owners, lessees, Institutional Mortgagees, and those claiming by, through or under the aforesaid.

C. Easement for Unintentional and Non-negligent Encroachments: If a unit shall encroach upon any common element, limited common element or upon any other Unit, by reason of original construction or by reason of the non-negligent or nonpurposeful act of the unit owner or the Developer, then an easement appurtenant to such encroaching Unit, to the extent of such encroachment, shall exist so long as such encroachment shall exist. If any common element or limited common element encroaches upon any Unit by reason of original construction or by reason of the nonpurposeful or non-negligent act of the Association or the Developer, then an easement appurtenant to such common element or limited common element, to the extent of such encroachment, shall exist so long as such encroachment shall exist.