

HALCYON MASTER DEED

or

DECLARATION OF CONDOMINIUM

AS AMENDED

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MASTER DEED  
or  
DECLARATION OF CONDOMINIUM

YAR ASSOCIATES, a Limited Partnership, hereinafter referred to as the Developer, being the owner in fee simple of the land with improvements thereon located in West Yarmouth, Barnstable County, Massachusetts, hereinafter referred to as the Property, being more particularly bounded and described as follows:

EASTERLY by Lot 6 shown on Land Court plan number 32462C, a distance of 326.08 feet, more or less:

NORTHERLY by Horse Pond (a Great Pond) a distance of 1040 feet, more or less;

WESTERLY by land of A.D. Makepeace Company (L.G. 30949A), a distance of 1231.96 feet, more or less;

SOUTHERLY by the line of Buck Island Road, a distance of 1527.37 feet, more or less.

All of said boundaries are determined by the Land Court to be located as shown on Land Court Subdivision Plan Number 32462-D<sup>4</sup> by Eldredge Surveying Co.

dated August 27, 1973, filed with the  
Land Court at Boston and said premises are shown thereon as Lot 7<sup>d</sup> containing 19.4 acres of land, more or less.

For title, see Land Court Certificate of Title Number 51534, filed in the Land Registration Office at Barnstable in Registration Book 412, page 14.

HEREBY DECLARE on behalf of itself, its grantees, successors and assigns to its grantees and their respective heirs, successors, assigns, executors and administrators as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and to any part of the Property.

THAT IT, as Owner proposes to create a condominium governed by and subject to the provisions of M.G.L.A. 183A, as amended, on the above described Property and that the Property above described from and after the date of the filing of this Declaration in the Land Court shall be and continue to be subject to each and all of the terms hereof and of said M.G.L.A. c. 183A, as amended, until this Declaration is terminated or abandoned in accordance with the provisions herein elsewhere contained.

1. DEFINITIONS: As used herein or elsewhere in the Condominium Documents, unless other wise provided, or unless the context requires otherwise, the following terms shall be defined as in this Article Provided:

1. Unit: any one of those parts of the eleven buildings which are separately described on "Architect's Plans" as Unit followed by a number.
2. Unit Owner: the person, persons or entity holding title to a Unit.
3. Assessment: that portion of the cost of maintaining, repairing, and managing the Property which is to be paid by each Unit Owner, which respective portions, except as herein specifically otherwise provided, are set forth in Article XVI, Section 1 hereof.

Association to a managing agent, accountants, attorneys,  
and other employees;

(c) any other items held by or in accordance with other  
provisions of this Declaration or the Condominium  
Documents to be Common Expense.

8. Common Surplus: 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 the amount of common expenses.

9. Condominium Documents: this Declaration and the Exhibits  
annexed hereto as the same from time to time may be amended. Said exhibits  
are as follows:

Exhibit A: "Architect's Plans": Building and Unit descriptions  
including a set of floor plans of the Buildings, showing the  
layout, location unit numbers and dimensions of the units,  
entitled "Halcyon" and bearing the verified statement of  
Robert B. Eldredge, Registered Land Surveyor, certifying  
that the plans fully and accurately depict the layout, location,  
unit number and dimensions of the units as built.

Exhibit B: By-laws of Horse Pond Corporation

Exhibit C: Rules and Regulations of the Association

Exhibit D: Site Plan

10. Developer: YAR ASSOCIATES, its grantees, successors and  
assigns.

11. Persons: Developer and any individual, firm, corporation, trustee, or other entity capable of holding title to real property.

12. Plans and Specifications: The plans and specifications referred to in Article I, Section 5 hereof.

13. Property: as defined and described in this Declaration.

14. Share: The percentages attributed to each Unit as set forth in Article VI hereof.

II. CONDOMINIUM NAME: The name of this condominium is HALCYON.

III. NAME OF ORGANIZATION OF UNIT OWNERS: The name of the organization of unit owners is Horse Pond Corporation, a corporation duly organized under the laws of the Commonwealth of Massachusetts with a principal place of business at West Yarmouth, Massachusetts. Horse Pond Corporation, herein referred to as the Association, has enacted by-laws pursuant to M.G.L.A. c. 183A, as amended, which are attached herto as Exhibit B.

IV. DESCRIPTION OF BUILDINGS: There are four buildings which comprise the condominium containing in the aggregate eighty-eight (88) units as follows:

<u>BUILDING NO.</u>	<u>STORIES</u>	<u>RES. NO.</u>	<u>ADDRESSES</u>
1	2 plus basement	1A-LH inclusive	Halcyon Drive W. Yarmouth, Mass.
2	2 plus basement	2A-2C inclusive	Halcyon Drive W. Yarmouth, Mass.
3	2 plus basement	3A-3I inclusive	Halcyon Drive W. Yarmouth, Mass.
4	2 plus basement	4A-4H inclusive	Halcyon Drive W. Yarmouth, Mass.

<u>BUILDING NO.</u>	<u>STORIES</u>	<u>RES. NO.</u>	<u>ADDRESSES</u>
5	2 plus basement	5A-5I inclusive	Halcyon Drive W. Yarmouth, Mass.
6	2 plus basement	6A-6H inclusive	Halcyon Drive W. Yarmouth, Mass.
7	2 plus basement	7A-7I inclusive	Halcyon Drive W. Yarmouth, Mass.
8	2 plus basement	8A-8E inclusive	Halcyon Drive W. Yarmouth, Mass.
9	There is no existing building presently designated as building No. 9		
10	There is no existing building presently designated as building No. 10		
11.	There is no existing building presently designated as building No. 11.		
12.	There is no existing building presently designated as building No. 12		
13.	2 plus basement	13A-13L inclusive	Halcyon Drive West Yarmouth, Mass.
14.	2 plus basement	14A-14J inclusive	Halcyon Drive West Yarmouth, Mass.
15.	2 plus basement	15A-15G inclusive	Halcyon Drive West Yarmouth, Mass.



All of said buildings are constructed of wood and brick, having poured concrete foundations, wood frame structure, wood siding and panelling, asphalt shingles on roof.

The locations of all of said buildings are shown on the plan dated August 27, 1973 by Eldredge Surveying Co., and attached hereto as Exhibit D, and the locations thereof and of the above designated street are also shown on said plan.

V. DESCRIPTION OF UNITS: The Condominium Units and the designations, locations, approximate areas, number of rooms, immediately accessible common areas, and other descriptive specifications thereof are as set forth in Exhibit "A" attached hereto, made a part hereof, and as shown on said plan. In addition to the bedrooms and baths specified in said Exhibit "A", each of said Units contains a foyer or entrance area, a living room with a dining area, a kitchen, closets, a full basement, and an interior stairway. There is adjacent to each of said units, a balcony open on the exterior side, accessible only from such Unit, and there shall be appurtenant to each Unit the exclusive right and easement to use the balcony adjacent thereto and accessible therefrom for residential purposes, subject however, to the restrictions set forth in Article X hereof and to the provisions of the By-Laws of Horse Pond Corporation, and to the rules and regulations promulgated pursuant thereto.

There is one gas heater for each Unit and title thereto shall appertain to the Units respectively. Each Unit has immediate access to the front and rear yards adjacent to each of said Units as shown on Exhibit D. For further description of the units and appurtenances thereto, see Article IX thereof.

VI. COMMON ELEMENTS: The common Elements consist of all of the land shown as Lot 7<sup>d</sup> on Exhibit D, all such land not covered by improvements being common open areas (subject to the exclusive right of each Unit Owner to use certain areas adjacent to his Unit as provided in Article IX hereof), parking areas, tennis courts to be erected within the common open areas, a swimming pool to be erected within the common open areas, a swimming pool to be erected within the common open areas, a club house to be erected within the common open areas, and the shoreline of Horse Pond as shown on Exhibit D, together with the right to use Horse Pond, subject to such rules and regulations as may be provided from time to time by the Association. The Common Elements also include such additional common areas as are defined in Chapter 183A.

The proportionate interest of each unit in the Common Elements is as follows:

1A - 1/88	2A - 1/88	3A - 1/88	4A - 1/88	5A - 1/88
1B - 1/88	2B - 1/88	3B - 1/88	4B - 1/88	5B - 1/88
1C - 1/88	2C - 1/88	3C - 1/88	4C - 1/88	5C - 1/88
1D - 1/88		3D - 1/88	4D - 1/88	5D - 1/88
1E - 1/88		3E - 1/88	4E - 1/88	5E - 1/88
1F - 1/88		3F - 1/88	4F - 1/88	5F - 1/88
1G - 1/88		3G - 1/88	4G - 1/88	5G - 1/88
1H - 1/88		3H - 1/88	4H - 1/88	5H - 1/88
		3I - 1.88		5I - 1/88

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6A - 1/88	7A - 1/88	8A - 1/88	13A- 1/88	14A- 1/88
6B - 1/88	7B - 1/88	8B - 1/88	13B- 1/88	14B- 1/88
6C - 1/88	7C - 1/88	8C - 1/88	13C- 1/88	14C- 1/88
6D - 1/88	7D - 1/88	8D - 1/88	13D- 1/88	14D- 1/88
6E - 1/88	7E - 1/88	8E - 1/88	13E- 1/88	14E- 1/88
6F - 1/88	7F - 1/88		13F- 1/88	14F- 1/88
6G - 1/88	7G - 1/88		13G- 1/88	14G- 1/88
6H - 1/88	7H - 1/88		13H- 1/88	14H- 1/88
	7I - 1/88		13I- 1/88	14I- 1/88
			13J- 1/88	14J- 1/88
			13K- 1/88	
			13L- 1/88	

15A - 1/88  
15B - 1/88  
15C - 1/88  
15D - 1/88  
15E - 1/88  
15F - 1/88  
15G - 1/88

VII. COMMON ELEMENTS USE: The Common elements shall be used in accordance with and subject to the following provisions:

1. Covenant against Partition. In order to effectuate the intent herof and to preserve the Condominium and the Condominium method of ownership, the Property shall remain undivided and no person, irrespective of the nature of his interest in the Property, shall bring any action or proceeding for partition or division of the Property or any part thereof until the termination of the Declaration in accordance with provisions herein elsewhere contained or until all of the Buildings are no longer tenatable, whichever first occurs. An exception to this clause in the event of casualty damage is set forth in Article XIV hereof.

2. Rules and Regulations Promulgated by Association. No person shall use the Common Elements 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 may be promulgated by the Association. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right but not the obligation, to promulgate rules and regulations limiting the use of the Common Elements to members of the Association and their guests and servants and to limit the use of the parking facilities in an manner including but not limited to assigning a specific number of spaces that may be used by any Unit Owner and/or charging a fee therefor. The Board of Directors of the Association may by a majority vote assess a fine against any Unit Owner for any and each violation of the rules and regulations, such fine or fines to be collected as an assessment in accordance with the provisions of Article XVI hereof.

3. Maintenance, repair, management and operation of the Common Elements shall be the responsibility of the Association, but nothing herein contained however shall be construed so as to preclude the Association from delegation to persons, firms, or corporations of its choice, such duties as may be imposed upon the Association by the terms of this subarticle VII (3) and as are approved by the Board of Directors of the Association. An exception to this clause is set forth in Article XXIII hereof.

4. Expenses incurred or to be incurred for the maintenance, repair, management and operation of the Common Elements shall be collected from Unit Owners as assessed, in accordance with the provisions contained elsewhere herein.

5. Subject to the provisions hereof and to the rules and regulations from time to time pertaining thereto, all Unit Owners may use the Common Elements in such manner as will restrict, interfere with or impede the use thereof by other Unit Owners.

6. Alterations and Improvements. The Association shall have the right to make or cause to be made such alterations and improvements to the Common Elements (which do not prejudice the right of any Unit Owner unless his written consent has been obtained), provided the making of such alterations and improvements are first approved by the Board of Directors of the Association and all first mortgagees of affected individual units.

(a) If 50% or more but less than 75% of the Unit Owners agree to make an improvement to the common areas and facilities, and assess the cost therefor, the cost of such improvement shall be borne solely by the Owners so agreeing.

(b) 75% or more of the Unit Owners may agree to make an improvement to the common areas and facilities and assess the cost thereof to all Unit Owners as a common expense, but if such improvement shall cost in excess of 10% of the then value of the condominium, any Unit Owner not so agreeing may apply to the Barnstable Superior Court on such notice to the organization of Unit Owners as the Court shall direct, for an order directing the purchase of his unit by the organization of Unit Owners at the fair market value thereof as approved by the Court, unless the Association agrees to abandon plans for improvement. The cost of any such purchase shall be a common expense.

7. Shares of Unit Owners. The shares of the Unit Owners in the Common Elements shall be as stated in Article VI and may be altered only by

amendment hereof executed in form for recording by all of the Unit Owners and First Mortgagees of such Owners. No such alteration shall affect the lien of prior recorded mortgages unless written consent of the holder of such mortgage is obtained and recorded. Nothing contained in this Paragraph 7. of Article VII shall, however, be construed as precluding or preventing the Developer from exercising any of its rights to reduce the fractional interest of the Unit Owners in common areas and facilities to reflect the construction of additional units as set forth in Paragraph 1 (d) of Article XVIII hereof or of requiring the consent of any holder of any mortgage upon one or more Units to any action which the Developer may take pursuant to said Paragraph 1 (d) of Article XVIII hereof.

8. The share of a Unit Owner in the Common Elements is appurtenant to the Unit owned by him, and inseparable from Unit Ownership.

#### VIII. MAINTENANCE AND REPAIR OF UNITS:

1. The Association, at its expense, shall be responsible for

(a) the maintenance, repair and replacement of:

(i) all portions of the Unit which contribute to the support of the Building in which it is located, (excluding, however, interior wall, ceiling and floor surfaces), including, without intending to limit the same to, outside walls of the Building, structural slabs, roof, interior boundary walls of Units and load-bearing columns;

(ii) all conduits, ducts, plumbing, septic-tank systems, wiring and other facilities for the furnishing of utility services

which may be contained outside the Unit.

(P11) all incidental damage caused to a Unit by such work as may be done or caused to be done by the Association in accordance herewith; and

(b) causing the common elements of the Condominium to be maintained according to reasonable acceptable standards, including, but not limited to, lawn care, snow removal, exterior cleaning, exterior painting, plumbing, carpentry, general maintenance of streets and grounds, lighting, master cable TV system, sitting and picnic areas, tennis courts, swimming pool, deck area, beach, and for causing such other normal maintenance and repair work as may be necessary;

(c) making contracts for septic-tank system maintenance, water, exterior lights, refuse collection, spray trees, exterior electric and gas service, vermin extermination, and other necessary services; also placing orders for such services and equipment, tools, appliances, materials and supplies as are necessary to properly maintain the Common Elements of the Condominium;

Funds for the payment of the above and foregoing shall be assessed against the Unit Owners as a common expense.

2. Each Unit Owner shall be required:

(a) to maintain, repair and replace at his expense, all portions of the Unit except the portions of each to be maintained, repaired and replaced by the Association;



(b) to perform his responsibilities in such manner so as not unreasonable to disturb the rights of other persons occupying and Units in any of the Buildings;

(c) not to paint or otherwise decorate or change the appearance of any portion of the Buildings not within the walls of the Unit, unless the written consent of the Association is obtained;

(d) to promptly report to the Association or its agent any defect or need for repairs or maintenance, the responsibility for the remedying of which is with the Association;

(e) not to make any alterations in the portions of the Unit or the Buildings which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Building without first obtaining the written consent of the Board of Directors of the Association and all First Mortgagees of affected individual Units, nor shall any Unit Owner impair any easement without first obtaining the written consents of the Association and of the Unit Owner or Owners for whose benefit such easement exists.

IX. UNITS SHALL BE CONSTITUTED AS FOLLOWS:

1. Real Property. Each Unit, together with the space within it, but excluding the land thereunder, as shown on the Architect's Plans and together with all appurtenances thereto, shall, for all purposes, constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel

of real property, independently of all other parts of the Property, subject only to provisions of this Declaration.

2. **Boundaries.** Each unit shall be bounded as to both horizontal and vertical boundaries as shown on the Architects's Plans subject to such encroachments as are contained in the Buildings whether the same now exist or are created by construction, settlement or movement of the Buildings, or permissible repairs, reconstruction or alterations. Such boundaries are intended to be as follows with respect to but not limited to the floors, ceilings, walls, doors and windows thereof:

- a. **Floors:** The upper surface of the subflooring, or in the case of a basement floor without sub-flooring, the upper surface of the concrete slab.
- b. **Ceilings:** The plane of the lower surface of the ceiling joists, or in the case of portions of the units situated immediately beneath the exterior roof, the plane of the lower surface of the wall studs, the plane of the interior surface of the concrete walls; as to doors, the exterior surface thereof; and as to windows, the exterior surfaces of the glass and of the window frames.

Each unit includes the ownership (I) as to the attic, of the area above the upper surface of the subflooring of the attic floor between the side walls of the second floor extended to the plane of the lower surface of the roof rafters, (II) of all the utility lines which exclusively serve the individual Unit and are located within the individual Unit above the upper surface of the concrete slab on the basement floor, (III) the heating system insofar as the same is located within the boundaries of the individual unit, (IV) exclusive rights to use stairways insofar as the same are located within the boundaries of the individual unit, (V) air conditioning systems, if any, appliances, fixtures, equipment, cabinets and any and all other items which are attached to and a part of the premises insofar as the same are located within the boundaries of the unit.

(a) the exclusive right to use the yard area immediately in front of the building for a distance of ten (10) feet and immediately in the rear area of the building for a distance of twelve (12) feet and the exclusive right to use the storage shed located within the aforesaid front yard area, subject to such restrictions as are contained herein and the provisions of the By-laws of the Association and the rules and regulations promulgated thereunder.

(b) an undivided share of the Common Elements, such undivided share to be that portion set forth in Article VI hereof;

(c) a license with or without monthly fees to maintain a private passenger automobile at and on a parking space in accordance with the Rules and Regulations of the Association;

(d) Association stockholdership and the resulting interest in the funds and assets held by the Association for the benefit of the Unit Owner;

(e) in addition to and not in derogation of the ownership of the space described on the Architect's Plans, an exclusive easement for the use of the space not owned by the Unit Owner and which is occupied by the Unit, which easement shall exist until the earlier of such time as this Declaration is terminated in accordance with the provisions herein elsewhere contained, or the Unit is no longer tenantable;

(f) the following easements from each Unit Owner to each other Unit Owner and to the Association;

(i) Ingress and Egress. Easements through the Common Elements for ingress and egress for all persons making use of such Common Elements in accordance with the terms of the Condominium Documents.

(ii) Maintenance, Repair and Replacement. Easements through the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Use of these easements, however, for access to the Units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.

(iii) Utilities. Easements through the Units and Common Elements for all facilities for the furnishing of utility services within the Buildings, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided, however, that the easements for such facilities through a Unit shall be only those which are substantially in accordance with the Plans and Specifications of the Buildings.

(iv) Structural Support. Every portion of a Unit which contributes to the structural support of a Building shall be burdened with an easement of structural support for the benefit of the Common Elements and the other Units in the Building.

(v) Emergency Easements for Ingress and Egress. Easements whenever reasonably required for emergency ingress and egress. No Unit Owner shall install or allow to be installed any security device or other thing which will or might impair such easements.

X. PURPOSE AND USE RESTRICTIONS: The purpose of this condominium is to provide for the operation of buildings with the condominium form of ownership. In order to provide for a congenial occupation of the Buildings and to provide for the protection of the values of the Units, the use of the Property shall be restricted

to and be in accordance with the following provisions:

1. The Units shall be used solely for single family residence purposes except as herein further provided.

Said units shall be subject to the restriction that, unless otherwise permitted by instrument in writing duly executed by the Board of Directors of the Association pursuant to provisions of the By-laws thereof:

(a) no such Unit shall be used for any purpose other than as a dwelling for one family.

(b) no business activities of any nature shall be conducted in any such unit; except that a lawyer, physician, architect, engineer, accountant, real estate broker, business consultant, or insurance agency, residing in any such Unit may maintain therein an office for his professional use and may display a small professional nameplate, but no employees or persons other than a resident of such Unit shall engage therein in any such activities and no such office shall be advertised, held out or used as a place for service to clients, customers or patients.

(c) no such Unit shall be rented, let, leased or licensed for use or occupancy by others than the owners thereof except to persons who have first been approved in writing by said Board of Directors, provided, however, that such right of approval shall not be exercised so as to restrict use of occupancy of Unit because of race, creed, color or national origin.

(d) dogs, cats or other pet animals or birds shall not be kept in any such Unit in such number or of such type as to be noisome or offensive to occupants of other Units; no farm animals nor breeding of pets for commercial

purposes shall be conducted,

(e) the architectural integrity of the buildings, appurtenances and the Units and their private yards shall be preserved without modification, and to that end, without limiting the generality, no fences, hedge, wall or other enclosure, awning, screen, antenna, sign, banner or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected or placed upon or attached to any such Unit or in a private yard or any part thereof, and no addition to or change or replacement of any exterior light, door knocker or other exterior hardware shall be made, and no painting attaching of decalcomania or other decoration shall be done on any exterior part or surface of any Unit nor on the interior surface of any window, and

(f) all use and maintenance of such Units shall be conducted in a manner consistent with the comfort and convenient of the occupants of other Units and in accordance with provisions with respect thereto from time to time promulgated by said Board of Directors.

Said restrictions shall be for the benefit of the owners of all of the Condominium Units and the Board of Directors of the Association as the persons in charge of the Common Elements, shall be enforceable solely by said Board of Directors, and shall, insofar as permitted by law, be perpetual; and to that end may be extended by said Board of Directors at such time or times and in such manner as permitted or required law, in the event said restrictions may not, as a matter of law, be perpetual for the continued enforceability thereof. No Unit owner shall be liable for any

breach of the provisions of this paragraph except such as occur during his or her ownership thereof. Notwithstanding the foregoing, however, the Developer may, until all of the units have been sold by it, lease unsold Units and use Units owned by it as models for display for purposes of sale or leasing of Units.

2. The Common Elements shall be used for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of the Units.

3. Nuisances. No nuisances shall be allowed upon the Property nor shall any use or practice be allowed which is a source of annoyance to occupants or which interferes with the peaceful possession and proper use of the Property by its residents and occupants.

4. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of Unit Owners and the Association for complying with the requirements of governmental bodies which require maintenance, modification or repair of the Property shall be the same as hereinabove provided for the maintenance and repair of that portion of the Property subjected to such requirements.

5. Interpretation: In interpreting deeds, mortgages and plans, the existing physical boundaries of the unit or of a unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed, mortgage or plan, regardless of settling or lateral movement of the building and regardless of

minor variance between boundaries shown on the plan or in the deed and those of the building.

6. Regulations. Regulations concerning use of the Property may be promulgated by the Association as hereinabove set forth; provided, however, that copies of such regulations are furnished to each Unit Owner prior to the time that the same become effective. The initial regulations, which shall be deemed effective until amended by the Association, are annexed hereto and made a part hereof as Exhibit C. Any amendments thereto shall be recorded in the Barnstable County Registry of Deeds as amendments to said Exhibit. Such regulations shall not impair or limit the rights of mortgagees, as elsewhere recited.

XI. RECORDINGS. All references herein to the Barnstable Registry of Deeds shall, if at that time the Property remains "Registered Land" mean the Land Registration Office of the Barnstable Registry of Deeds. Whenever any documents referred to herein are required or permitted to be recorded, said recording shall be in the Barnstable Registry of Deeds.

XII. ADMINISTRATION: The administration of the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

1. The Association shall be incorporated under the name "Horse Pond Corporation", as a corporation under the laws of the Commonwealth of Massachusetts. Any other form of organization for the Association may be submitted after first obtaining the written approval of all the members thereof.



2. The By-laws of the Association shall be in the form attached as Exhibit B until such are amended in the manner therein provided.

3. The duties and powers of the Association shall be those set forth in this Declaration, the Articles of Incorporation and the By-laws, together with those reasonably implied to effect the purposes of the Association, and this Declaration; provided, however, that if there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the By-laws, the terms and provisions of this Declaration shall prevail and the Unit Owners covenant to vote in favor of such amendments to the Articles of Incorporation and/or By-laws as will remove such conflicts or inconsistencies. The powers and duties of the Association shall be exercised in the manner provided by the Articles of Incorporation and the By-laws and any duties or rights of the Association which are granted by or to be exercised in accordance with the provisions of this Declaration, shall be so exercised except that wherever this Declaration requires the act or approval of the Board of Directors of the Association, such act or approval must be that of the Board done or given in accordance with the By-laws.

4. Notices or demands, for any purpose, shall be given by the Association to Unit Owners and by Unit Owners to the Association and other Unit Owners in the manner provided for notices to members of the Association by the By-laws of the Association.

5. All funds and titles of all properties acquired by the Association and the proceeds thereof after deducting therefrom the costs incurred by the Association in acquiring the same shall be held for the benefit of the Unit Owners

for the purpose herein stated.

6. All income received by the Association from the rental or licensing of any part of the Common Elements (as well as such income anticipated) shall be used for the purpose of reducing prospective Common Expenses prior to establishing the annual assessment for Common Expenses.

7. The Association, by and through its Board of Directors, is hereby vested with the power to delegate its powers, duties and authority granted by this Declaration, by entering into a management contract with such persons or organizations or corporations, and upon such conditions and terms as the Board of Directors may elect except as provided in Article XXIII hereof. The management costs and fees as may be contained in any management contract shall be common expenses.

XIII. 'INSURANCE: The Association shall cause to be placed and kept in force all insurance needed to adequately protect the Association, its members and mortgagees holding mortgages covering Units, as their respective interests may appear (or as required by law), including, but not limited to, public liability insurance and fire and extended coverage insurance, all as is more particularly hereinafter set forth in this Declaration of Condominium.

The insurance which shall be carried upon the Property shall be governed by the following provisions:

1. Authority to Purchase. Except Builder's Risk and other required insurance furnished by Developer during construction, all insurance policies

upon the Property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the Unit Owners and their respective mortgagees (hereinafter sometimes jointly referred to as "beneficial owners") as their interests may appear and shall provide for the issuance of certificates of insurance with mortgage endorsements to the holders of first mortgages on the Units or any of them, and, if insurance companies will agree, shall provide that the insurer waives its rights of subrogation as to any claims against Unit Owners, the Association and their respective employees, agents and invitees. Such policies and endorsements shall be deposited with the Insurance Trustee (as hereinafter defined) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

2. Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability and as may be required by law, but all such insurance shall contain the same waiver of subrogation as that referred to in Article XIII (1) hereof (if the same is available).

### 3. Coverage

(a) Casualty. The Buildings and all other insurable improvements upon the property and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against:

(i) loss or damage by fire and other hazards covered by the standard extended coverage endorsement.

(ii) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including but not limited to, vandalism, malicious mischief, windstorm and water damage;

(b) Public Liability and Property Damage in such amounts and in such forms as shall be required by the Association including but not limiting the same to water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverages;

(c) Workmens Compensation policy to meet the requirements of law;

(d) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner and liabilities of a Unit Owner to any other Unit Owner and to the Unit Owners as a group.

4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as Common Expenses.

5. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty losses shall be paid to the First National Bank of Yarmouth, as Trustee or to any other bank with trust powers as may be approved by the Association. Such Trustee or any other bank acting as such is herein referred to as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency

of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole 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 Association, the Unit Owners and their respective mortgagees, in the following shares, but such shares need not be set forth upon the records of the Insurance Trustee:

(a) Common Elements. Proceeds on account of damage to Common Elements--that undivided share for each Unit Owner and his mortgagee, if any, which is set forth in Article VI hereof.

(b) Units. Proceeds on account of Units shall be held in the following undivided shares:

(i) Partial destruction when a Building is to be restored--for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each damaged Unit. Upon the request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate portions as aforesaid, and each Unit Owner shall be bound by and the Insurance Trustee may rely upon such certification.

(ii) Total destruction of a Building or where the Building is not to be restored--equal shares for all Unit Owners in said Building.

(c) Mortgages. In the event a mortgagee 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.

6. Distribution of Proceeds. The net proceeds of Insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners, after first paying or making provision for the payment of the expense of the Insurance Trustee, in the following manner:

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

(b) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners of the Units in the damaged Building in proportion to the cost of repairing the damage suffered by each damaged Unit. Upon request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate portions as aforesaid, and each Unit Owner shall be bound by and the Insurance Trustee may rely upon such certification. Remittances to said Unit Owners and their mortgagees shall be payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him.

(c) Certificate. In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the Unit Owners and their respective shares of the distribution. Upon request of the Insurance Trustee, the Association forthwith shall deliver such certificate.

XIV. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE:

A. If any part of the Common Elements shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

1. Rebuilding of the common areas and facilities made necessary by fire or other casualty loss shall be carried out in the manner set forth in the condominium documents dealing with the necessary work of maintenance, repair and replacement, using common funds, including the proceeds of any insurance for that purpose, provided such casualty loss does not exceed ten percent of the value of the condominium prior to the casualty.

2. If said casualty loss exceeds ten percent of the value of the condominium prior to the casualty, and

(a) if seventy-five percent of the Unit Owners do not agree within 120 days after the date of the casualty to proceed with repair or restoration, the condominium, including all Units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with any common funds shall be divided

in proportion to the Unit Owners respective undivided ownership in the common areas and facilities. Upon such sale, the condominium shall be deemed removed from the provisions of M.G.L.A. c. 183A.

(b) If seventy-five percent of the Unit Owners agree to proceed with the necessary repair or restoration, the cost of the rebuilding of the common areas and facilities, in excess of any available common funds, including the proceeds of any insurance, shall be a common expense; provided, however, that if such excess cost exceeds ten percent of the value of the condominium prior to the casualty any unit owner who did not so agree may apply to the Barnstable Superior Court, on such notice to the Association as the court shall direct, for an order directing the purchase of his unit by the Association at the fair market value thereof as approved by the court. The cost of any such purchase shall be a common expense.

3. Any such reconstruction or repair shall be substantially in accordance with the original construction plans and specifications.

4. Encroachments upon or in favor of Units which may be created as a result of any reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was either in accordance with the original construction plans and specifications or a plan of reconstruction approved by all Unit Owners.

5. Certificate. The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be



reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

B. 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.

1. Estimate of Costs. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such Bonds as the Board of Directors desires.

2. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) assessments shall be made against the Unit Owners who own the damaged property in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the Unit Owners who own the damaged property in sufficient amounts to provide funds for the payment of such costs. The foregoing assessments shall be made in proportion to the cost of repairing the damage suffered by each

Unit Owner as determined by the Association, and each Unit Owner shall be bound by such determination.

3. 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:

(a) Association. If the amount of the estimated costs of reconstruction and repair exceeds the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the sums paid upon assessments to meet such costs 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.

(b) 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 assessments 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:

(i) Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the Unit Owner: to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or

repair, in such amounts and at such times as the Unit Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Unit Owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of the Unit Owner to make such reconstruction or repair.

(ii) Association: Lesser damage. If the amount of the estimated costs of reconstruction and repair is less than the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request of 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.

(iii) Association: Major damage. If the amount of the estimated costs of reconstruction and repair is more than the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, 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 Massachusetts and employed by the Association to supervise the work.

(iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be

from insurance proceeds; and 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 jointly to the Unit Owner and their mortgagees who are the beneficial owners of the fund.

(v) When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the costs of repairing the Common Elements and the balance to the Units in the shares above stated.

4. Insurance Adjustments. Each Unit Owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one Unit, subject to the rights of mortgagees of such Unit Owners.

Article XV has been omitted.

XVI. ASSESSMENTS: Assessments against the Unit Owners shall be made or approved by the Board of Directors of the Association and paid by the Unit Owners to the Association in accordance with the following provisions:

1. Share of Expense. Common Expenses. Each Unit Owner shall be liable for his share of the Common Expenses, and any Common Surplus shall be owned by each Unit Owner in a like share.

SHARE OF EXPENSES

<u>UNIT NUMBER</u>	<u>FRACTIONAL SHARE</u>
1A	1/88
1B	1/88
1C	1/88
1D	1/88
1E	1/88
1F	1/88
1G	1/88
1H	1/88
2A	1/88
2B	1/88
2C	1/88
3A	1/88
3B	1/88
3C	1/88
3D	1/88
3E	1/88
3F	1/88
3G	1/88
3H	1/88
3I	1/88

UNIT NUMBERFRACTIONAL SHARE

7A	1/88
7B	1/88
7C	1/88
7D	1/88
7E	1/88
7F	1/88
7G	1/88
7H	1/88
7I	1/88
8A	1/88
8B	1/88
8C	1/88
8D	1/88
8E	1/88
13A	1/88
13B	1/88
13C	1/88
13D	1/88
13E	1/88
13F	1/88
13G	1/88
13H	1/88
13I	1/88
13J	1/88
13K	1/88
13L	1/88

UNIT NUMBERFRACTIONAL SHARE

4A	1/88
4B	1/88
4C	1/88
4D	1/88
4E	1/88
4F	1/88
4G	1/88
4H	1/88
5A	1/88
5B	1/88
5C	1/88
5D	1/88
5E	1/88
5F	1/88
5G	1/88
5H	1/88
5I	1/88
6A	1/88
6B	1/88
6C	1/88
6D	1/88
6E	1/88
6F	1/88
6G	1/88
6H	1/88

<u>UNIT NUMBER</u>	<u>FRACTIONAL SHARE</u>
14A	1/88
14B	1/88
14C	1/88
14D	1/88
14E	1/88
14F	1/88
14G	1/88
14H	1/88
14I	1/88
14J	1/88
15A	1/88
15B	1/88
15C	1/88
15D	1/88
15E	1/88
15F	1/88
15G	1/88



2. Assessments other than Common Expenses. Any assessments, the authority to levy which is granted to the Association or its Board of Directors by the Condominium Documents, shall be paid by the Unit Owners to the Association in the proportions set forth in the provision of the Condominium Documents authorizing the Assessment.

3. Assessments for Common Expenses. Assessments for Common Expenses shall be made for the calendar year annually in advance on or before the second Monday in December of the year preceding for which the assessments are made and at such other and additional times as in the judgment of the Board of Directors additional Common Expenses assessments are required for the proper management, maintenance and operation of the Common Elements. Such annual assessments shall be due and payable in three (3) equal consecutive monthly payments, on the first day of each month, beginning with January of the year for which the assessments are made. The total of the assessments shall be in the amount of the estimated Common Expenses for the year including a reasonable allowance for contingencies and reserves less the amounts of unneeded Common Expense Account balances and less the estimated payments to the Association for defraying the costs of the use of Common Elements. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by a new assessment.

4. Other Assessments shall be made in accordance with the provisions

of the Condominium Documents and if the time of payment is not set forth in the Condominium Documents, the same shall be determined by the Board of Directors of the Association.

5. Assessments for Emergencies. Assessments for Common Expenses of emergencies which cannot be paid from the Common Expense Account shall be made only the Board of Directors of the Association.

6. Assessments for Liens. All liens of any nature including taxes and special assessments levied by governmental authority which are a lien upon more than one Unit or upon any portion of the Common Elements, shall be paid by the Association as a Common Expense and shall be assessed against the Units in accordance with the Shares of the Units concerned or charged to the Common Expense Account, whichever in the judgment of the Board of Directors is appropriate. The foregoing notwithstanding, the Board of Directors shall in no event be required to cause the Association to make payments to discharge attachments against Unit Owners and if such payments are made, they shall be assessed solely against the Unit Owners affected by the attachments.

7. Assessment Roll. The assessments against all Unit Owners shall be set forth upon a roll of the Units which shall be available in the Office of the Association for inspection at all reasonable times by the Unit Owners or their duly authorized representatives. Such roll shall indicate for each Unit the name and address of the Owner or Owners, the assessments for all purposes and the amounts of all assessments paid and unpaid. A certificate made by the Association as to the status of a Unit Owner's assessment account shall limit

the liability of any person for whom made other than the Unit Owner when recorded in the Barnstable County Registry of Deeds. The Association shall issue such certificates in recordable form to such persons as a Unit Owner shall request in writing.

8. Liability for Assessments. The Owner of a Unit and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of any Common Element or by abandonment of the Unit for which the assessments are made. A Purchaser of a Unit at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for assessments coming due after such sale and for that portion of due assessments pro-rated to the period after the date of such sale. Such a purchaser as aforesaid shall be entitled to the benefit of all prepaid assessments paid beyond the date such purchaser acquired title.

9. Lien for Assessments. The unpaid portion of an assessment which is due shall be secured by a lien upon the Unit and all appurtenances thereto and shall be enforced in the manner provided in Section Five of Chapter Two Hundred and Fifty-four of the General Laws of Massachusetts. Such lien shall have priority over all other liens, except municipal liens and first mortgages of record held by a bank or insurance company, as to such portion of said common expenses as became due within six months prior to the commencement of an

actions to enforce such lien pursuant to said Section Five. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied.

10. Application.

(a) Interest. Application of Payments. Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before twenty (20) days after the date when due shall bear interest at the then prevailing prime rate of interest being charged by the First National Bank of Boston, plus four (4%) percent from the date when due until paid; provided, however, that in no event shall the interest charged exceed the amount of any limitation under Massachusetts Law. All payments upon account shall be applied first to interest and then to the assessment payment first due. All interest collected shall be credited to the Common Expense Account.

(b) Suit. The Association at its option may enforce collection of delinquent assessments by suit at law or by foreclosure of the liens, securing the assessments or by any other competent proceeding and, in any event, the Association shall be entitled to recover in the same action, suit or proceeding the payments which are delinquent at the time of judgment or decree together with interest thereon at the rate of ten percent (10%) per annum, and all costs incident to the collection and the action, suit or proceedings, including, without limiting the same, to reasonable attorneys' fees, provided, however,

that in no event shall the interest charged exceed the amount of any limitation under Massachusetts Law.

XVII. COMPLIANCE AND DEFAULT: Each Unit Owner shall be governed by and shall comply with the terms of the Condominium Documents and Regulations adopted pursuant thereto and said Documents and Regulations as they may be amended from time to time. A default shall entitle the Association or other Unit Owners to the following relief:

1. Legal Proceeding. Failure to comply with any of the terms of the Condominium Documents and Regulations adopted pursuant thereto, shall be grounds for relief which may include, without intending to limit the same, an action to recover sums due for damages, an injunction, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

2. 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 his employees, invitees, 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 fire insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of right of subrogation.

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.

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.

5. All rights, remedies and privileges granted to the Association or a 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 party by the Condominium Documents or at law or in equity.

XVIII. AMENDMENT: Except for alterations in the Shares which cannot be done except with the consent of all Unit Owners whose Shares are being affected, and their mortgagees, the Condominium Documents may be amended in the following manner:

1. Master Deed Declaration of Condominium. Amendments to the Master Deed Declaration of Condominium shall be proposed and adopted as follows:

(a) Notice. Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the Notice of any

meeting at which a proposed amendment is considered.

(b) Resolution. A Resolution adopting a proposed amendment may be initiated by either the Board of Directors of the Association or by the Unit Owners meeting as members of the Association and after being proposed and approved by either of such bodies, must be approved by the other. Directors and Unit Owners not present at the meeting considering such amendment may express their approval or disapproval in writing or by proxy. Such approvals must be by not less than seventy-five (75%) percent of the Directors and seventy-five (75%) percent of the Unit Owners and their mortgagees.

(c) Recording. A copy of each amendment shall be certified by at least two (2) officers of the Association as having been duly adopted and shall be effective when duly filed in the Land Registration Office at the Barnstable Registry of Deeds. Copies of the same shall be sent to each Unit Owner and his mortgagee in the manner elsewhere provided for the giving of notices but the same shall not constitute a condition precedent to the effectiveness of such amendment.

(d) Notwithstanding anything herein contained to the contrary, during the period commencing on the date hereof and ending on December 31, 1974, unless there shall have been erected prior thereto 135 Units on the property the Developer shall have the right at any time to adopt amendments to the within Master Deed or Declaration of Condominium to reflect the fact that additional

Units have been built upon the property by the Developer, in which event such amendments shall reduce the Unit Owners' interest in the Common Elements to that portions thereof which is equal to a fraction, the numerator of which is one and the denominator of which is the number of units which have been built at the time of such amendment, subject to the provision that in no event shall the denominator exceed 151.

(e) Further, in recognition of the fact that it is contemplated that additional Units and Common Elements are to be built by the Developer as set forth in Paragraph 1(d) hereof, the Developer shall have the right, solely for its own account, to enter upon the Property from time to time to build and sell additional units and thus effectuate such contemplation, and to carry out any activity ancillary thereto or in connection therewith, reserving to itself the proceeds which may be derived therefrom.



2. Association: Articles of Incorporation and By-laws. The Articles of Incorporation and the By-laws of the Association shall be amended in the manner provided by such documents.

XIX. TERMINATION: The Condominium shall be terminated, if at all, in the following manner:

1. Seventy-five (75) percent of the Unit Owners may remove all of the condominium or a portion thereof from the provisions of M.G.L.A. Chapter 183A by an instrument to that effect, duly filed in the Land Registration Office at the Barnstable Registry of Deeds, that the holders of all liens upon any of the Units affected consent thereto by instruments duly recorded. The termination shall become effective when such agreement has been duly filed in the said Land Registration Office.

2. Destruction. If it is determined in the manner elsewhere provided that the property shall not be reconstructed after casualty, this condominium, including all units, shall be subject to partition at the suit of any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale together with any common funds shall be divided in proportion to the Unit Owners' respective undivided ownership in the common areas and facilities. Upon such

sale, the condominium shall be deemed removed from the provisions of M.G.L.A., Chapter 183A and terminated.

3. Shares of Unit Owners after Termination. After termination as provided in Section 1 of this Article, the condominium, including all the Units, or the portion thereof thus removed, shall be owned in common by the Unit Owners subject to the provisions of Article XVIII hereunder and the organization of Unit Owners shall be dissolved, unless otherwise provided in the removal instrument. The undivided interest in the property owned in common held by each Unit shall be equal to the percentage of the undivided interest of such owner in the common areas and facilities. All funds held by the Association and insurance proceeds, if any, shall be and continue to be held jointly for the Unit Owners and their first mortgagees in proportion to the amount of the assessments paid by each Unit Owner. The costs incurred by the Association in connection with a termination shall be a Common Expense.

4. The removal of the condominium from the provisions of M.G.L.A. Chapter 183A shall not bar the subsequent resubmission of the land and buildings involved to the provisions of said Chapter.

XX. COVENANTS RUNNING WITH THE LAND. All provisions of the Condominium Documents shall be covenants running with the land and with every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto; and every Unit Owner and claimant of the Property or any part thereof or interest therein, and his heirs, executors, administrators, successors and

assigns shall be bound by all of the provisions of the Condominium Documents.

XXI. LIENS:

1. Protection of Property. Each Unit Owner shall use his best efforts to discharge, satisfy or otherwise remove all liens against a Unit other than for duly recorded mortgages, taxes or special assessments within thirty (30) days from the date the lien attaches. All taxes and special assessments upon a Unit shall be paid before becoming delinquent.

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

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

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

5. The Association shall maintain a register of all duly recorded mortgages.

XXII. JUDICIAL SALES AND OTHER TRANSFERS OF TITLE:

1. No judicial sale of a Unit nor any interest therein shall be valid unless the sale is a result of a public sale with open bidding or, in the event of a private sale, unless the sale is to a purchaser approved by the Board of Directors

of the Association, which approval shall be in recordable form and shall be delivered to the purchaser and duly filed in the Land Registration Office at the Barnstable Registry of Deeds.

2. Unauthorized Transactions. Any sale or lease which is not authorized pursuant to the terms of this Declaration or for which authorization has not been obtained pursuant to the terms of this Declaration, shall be void unless subsequently approved or ratified by the Board of Directors of the Association.

3. In the event proceedings are instituted to foreclose any mortgage on any Unit and should the mortgagor thereof fail to redeem from the mortgagee, the Association shall have the right to bid for such Unit at the foreclosure sale and if so purchased, the Association shall take and have absolute fee simple title to the Property, free from any claim or right of any grantee, his heirs or assigns or such mortgagor, and every person claiming by, through or under such mortgagor. Nothing herein contained shall preclude a mortgage institution, banker, savings and loan association, insurance company or any other recognized lending institution from owning a mortgage on any Unit, and such lending institution shall have an unrestricted, absolute right to accept title to the Unit in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof and the laws of the Commonwealth of Massachusetts and to bid upon said Unit at the foreclosure sale.

XXIII. PROVISIONS PERTAINING TO DEVELOPER: For so long as the

Developer continues to own any of the Units and as provided herein the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve Developer from any obligations of a Unit Owner to pay assessments as to each Unit owned by it, in accordance with the Condominium Documents.

1. For so long as Developer owns more than fifty (50%) percent of the Units as of the date of the annual meeting of the Association, a majority of the Board of Directors of the Association shall be selected by the Developer to serve until the next annual meeting, and such members as may be selected by Developer need not be owners of Units in the Building.

2. 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. The estimates of Common Expenses are deemed accurate, but no warranty or guaranty is made nor intended, nor may one be relied upon.

3. In order to maintain high standards and to assure the proper development of the Condominium, the grantors herein, known as Developer, hereby reserve for a period of two years from the date of recording of this Declaration, the power to contract with persons, firm or corporation of its choice for the

management of the Condominium, and to delegate to such managing agent, which may be Developer or either of them, all powers of the Association in regards to maintenance, repair, management and operation of the Association. The management costs and fees as may be contained in such management contract shall be Common Expenses.

XXIV. INVALID OR UNENFORCEABLE PROVISIONS: If any term, covenant, provision, phrase or other element of the Condominium Documents is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other term, provision, covenant or element of the Condominium Documents.

XXV. UNIT DEEDS: Any transfer of a Unit shall include all appurtenances thereto whether or not specifically described, including the interest of the Unit Owner in the shares of the Association.

XXVI. CAPTIONS: Captions used in the Condominium Documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the Condominium Documents.

XXVII. GENDER, SINGULAR, PLURAL: Whenever the context so permits, the use of the plural shall include the singular, the plural and any gender shall be deemed to include all genders.

XXVIII. SEVERABILITY: If any provision of this Declaration, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the Commonwealth of Massachusetts, then the said laws shall be deemed

controlling and the validity of the remainder of this Declaration and the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

IN WITNESS WHEREOF, YAR ASSOCIATES, the Developer, has caused this Declaration to be executed as a sealed instrument and has caused these presents to be signed, acknowledged and delivered in its name and on its behalf by Haim Eliachar and Lawrence J. Sperber, the General Partners, this 27th day of August, 1973.

YAR ASSOCIATES

BY:

Haim Eliachar, General Partner

BY:

Lawrence J. Sperber, General Partner

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK ss.

August 27, 1973

Then personally appeared Lawrence J. Sperber, General Partner, as aforesaid, and acknowledged the foregoing to be his free act and deed and the free act and deed of YAR ASSOCIATES.

Notary Public

My commission expires: