

DECLARATION OF RESTRICTIONS, RESERVATIONS,
COVENANTS, CONDITIONS AND EASEMENTS
BIVEN'S LAKE ESTATES SOUTH,
A CONDOMINIUM

BIVEN'S CENTER, INC., a Florida corporation, hereinafter referred to as "Developer," as present owner of the Property designated as BIVEN'S LAKE ESTATES SOUTH, A CONDOMINIUM, hereby makes and declares the restrictions, reservations, covenants, conditions and easements set out hereinafter as applicable to the property described as Biven's Lake Estates South, a Condominium according to this Declaration, exhibits and plot plans. The purpose of this Declaration is to submit the lands described in this instrument and improvements thereon to the condominium form of ownership and use in the manner provided by Chapter 711, Florida Statutes, 1971.

All the restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall rule perpetually unless terminated as provided herein and shall be binding upon all parties or persons subsequently owning property in said Condominium, and in consideration of receiving and by acceptance of a conveyance, grant, devise, lease or mortgage, all grantees, devisees, lessees, and assigns and all parties claiming by, through or under such persons, agree to be bound by all the provisions hereof except, however, if Developer shall convey all of the property designated as Biven's Lake Estates South, a Condominium, to a corporate grantee, then and in any such event, said immediate grantee shall be considered as Developer herein for all intents and purposes. Both the burdens imposed and the benefits shall run with each Unit and the interest in Common Property as herein defined.

1. Development of Biven's Lake Estates South,
a Condominium.

The Developer, hereby creating a condominium, will construct upon the following described property designated as the Condominium Property:

A tract of land situated in Lot 24 of the Thomas Napier Grant in T 10 S, R 19 and 20 E, Alachua County, Florida, said tract of land being more particularly described as follows:

Commence at the Northeast corner of the Thomas Napier Grant, in T 10 S, R 19 and 20 E, and run N 85° 28' 57" E, 74.81 feet to the West right of way line of U.S. Highway No. 441; thence run S 00° 02' 00" E, along said right of way line, 414.81 feet; thence run S 89° 58' 00" W, 455.41 feet to the Point of Beginning; thence run S 76° 58' 00" W, 66.95 feet; thence run N 13° 02' 00" W, 18.00 feet; thence run S 76° 58' 00" W, 217.70 feet, more or less, to the Easterly water's edge of Biven's Arm Lake, said point being designated Point "A"; thence return to the Point of Beginning and run S 06° 19' 18" E, 830.00 feet; thence S 83° 40' 42" W, 249.60 feet, more or less, to the Easterly water's edge of Biven's Arm Lake; thence run Northwesterly along the Easterly water's edge of said Biven's Arm Lake, 816.81 feet, more or less, to the previously described Point "A" and the end of this description; also any part of that tract of land described in Official Record Book 601, page 408, of the Public Records of Alachua County, Florida, lying West of the Easterly water's edge of said Biven's Arm Lake, South of the Westerly projection of the most Northerly line, and North of the Westerly projection of the South line of the above described tract of land.

apartment buildings and other improvements on the Property covered by this Declaration of Biven's Lake Estates South, a Condominium. Developer had the Property surveyed and divided the Property into ninety (90) Apartment Units, i.e. 101-112; 114-131; 201-212; 214-231; 301-312; 314-331 and into Lot A, with the intent to create a Condominium Project, as designated and shown on the exhibits recorded in Condominium Book 1 at Pages 22-25, bearing the same number, said exhibits being designated as Exhibit "A" hereto, and by this reference made a part hereof. Notwithstanding the actual location of the walls, ceilings and floors, each Unit consists of the space bounded by the vertical projections of the Unit boundary lines shown on the plat between the horizontal planes at the floor and ceiling elevations shown. All property included in this Condominium which is not within any Apartment Unit shall be deemed Common Property and has been designated as Lot A, and hereafter the term "Common Property" shall include and be synonymous with Lot A.

The Owner or Owners of each Unit shall have a one-ninetieth (1/90th) undivided interest in Lot A. The Common Property includes, but is not limited to, recreation area, pavilion, ground support areas, foundations, attic areas, etc., and substantial portions of the exterior walls, floors, ceilings and walls between Units.

2. Prohibition of Further Subdivision and Waiver of Partition.

The space within any of the Units and the Common Property shall not be further subdivided. A one-ninetieth (1/90th) undivided interest in the Common Property is hereby declared to be appurtenant to each Unit and such undivided interest shall not be separately conveyed, devised, encumbered or otherwise included with the Unit even though such interest is not expressly mentioned or described in the conveyance, or other instrument. Any instrument, whether a conveyance, mortgage or otherwise, which describes only a portion of the space within any Unit shall be deemed to describe the entire Unit owned by the person executing such instrument and an interest in the entire area described as Lot A. Any instrument subsequent to the Developer's conveyances, conveying, transferring or encumbering an undivided percentage interest in a Unit must also convey, transfer or encumber the undivided percentage interest in the Common Property owned by the person executing such conveyance or encumbrance and which is appurtenant to such Unit.

The Developer hereby, and each subsequent Owner of any interest in a Unit and in the Common Property, by acceptance of a conveyance or any instrument transferring an interest, waives the right of partition of any interest in the Common Property under the laws of the State of Florida as it exists now or hereinafter until this Condominium Apartment Project is terminated according to the provisions hereof or by law. Any Owner may freely convey an interest in a Unit together with an undivided interest in the Common Property subject to the provisions of this Declaration. The Developer hereby reserves the right to remove any party walls between any Condominium Units in order that the said Units may be used together as one integral Unit. All assessments and voting rights, however, shall be calculated as if such Units were as originally designated on the exhibits attached to this Declaration, notwithstanding the fact that the several Units are used as one.

3. Easements. All Owners of Units shall have as an appurtenance to their Units, a perpetual easement for ingress to and egress from their Units over stairs, terraces, walks

and other Common Property from and to the public roadways bounding Biven's Lake Estates South, a Condominium, and a perpetual right or easement, in common with all persons owning an interest in any Unit in Biven's Lake Estates South, a Condominium, to the use and enjoyment of all public portions of buildings and to other common facilities (including but not limited to utilities as they now exist) located in or on the Common Property.

All property covered by the exhibits hereto shall be subject to a perpetual easement for encroachments which now exist or hereafter exist caused by settlement or movement of the buildings and said encroachments shall be permitted to remain undisturbed, and such easement shall continue until such encroachment no longer exists.

All Units and the Common Property shall be subject to a perpetual easement in gross being granted to Biven's South, Inc. and its successors for ingress and egress for the purpose of having its employees and agents perform all obligations and duties of the corporation set forth herein.

All Owners of Units in Biven's Lake Estates South, a Condominium, and Biven's South, Inc., its members, employees and agents shall have a non-exclusive easement for ingress and egress over the following described property to-wit:

A tract of land situated in Lot 24 of the Thomas Napier Grant in T 10 S, R 19 and 20 E Alachua County, Florida, said tract of land being more particularly described as follows:

Commence at the Northeast corner of the Thomas Napier Grant in T 10 S, R 19 and 20 E, and run N 85° 28' 57" E, 74.81 feet to the West Right of Way line of U.S. Highway No. 441; thence run S 00° 02' 00" E, along said Right of Way line, 414.81 feet; thence run S 89° 58' 00" W, 455.41 feet; thence run S 06° 19' 18" E, 666.31 feet to the Point of Beginning; thence continue S 06° 19' 18" E, 163.69 feet; thence run N 83° 40' 42" E, 55 feet more or less to the Westerly Right of Way line of S.W. 14th Drive (60 ft. Roadway); thence run Northwesterly, concave to the Northeast, 180 feet more or less along said Westerly Right of Way line to the point of beginning.

and in consideration therefor shall be responsible for the proper maintenance, repair and replacement of said easement area and improvements and/or landscaping thereon. Such non-exclusive easement shall be obtained from Biven's Gardens Hotel, Ltd., a Florida limited partnership, and no warranty of title to such easement is made by Developer.

4. Non-profit Corporation. A Charter for incorporation of Biven's South, Inc. (a non-profit corporation herein referred to as the Corporation and sometimes referred to as the Association) has been filed with the office of the Secretary of State of the State of Florida and duly processed in said office to the end that the said Charter has been granted. The principal purpose of said Corporation is to perform the acts and duties desirable for apartment house management for the Units and Common Property and to levy and enforce collection of assessments as are necessary to perform said acts and duties and all duties herein expressly or impliedly imposed upon the said Corporation.

The Developer and all persons hereafter owning a vested present interest in the fee title to any one of the Units shown on the exhibits hereto and which interest is evidenced by recordation of a proper instrument in the public records of Alachua County, Florida, shall automatically be members and their memberships shall automatically terminate when they no longer own such interest.

There shall be a total of ninety (90) votes to be cast by the Owners of the Condominium Units. Such votes shall be apportioned and cast as follows: The Owner of each Condominium Unit (designated as such on the exhibits attached to this Declaration) shall be entitled to cast one (1) vote. Where a Condominium Unit is owned by the managing non-profit Corporation, no vote shall be allowed for such Condominium Unit. Where a Condominium Unit is owned by more than one person, all the Owners thereof shall be collectively entitled to the vote assigned to such Unit and such Owners shall, in writing, designate an individual who shall be entitled to cast the vote on behalf of the Owners of such Condominium Unit of which he is a part until such authorization shall have been changed in writing. The term, "Owner", as used herein, shall be deemed to include the Developer.

All the affairs, policies, regulations and property of the Corporation shall be controlled and governed by the Board of Directors of the Corporation consisting of nine (9) members, who are all to be elected annually by the members entitled to vote. Each director shall be the Owner of a Condominium Unit (or partial Owner of a Condominium Unit where such Unit is owned by more than one individual), (or if a Unit is owned by a corporation, including Developer, any duly elected officers of an Owner Corporation may be elected a director or directors).

It shall be the duty of the Corporation to provide, through its agents and employees, for the administration, operation, maintenance, repair and replacement of the Common Property, including, but not limited to all exterior doors and all exterior surfaces of the buildings, except windows of individual Units, whether Common Property or a part of a Unit (unless damage to same is covered by insurance carried by the non-profit Corporation), to make reasonable uniform rules and regulations from time to time as well as to perform all other duties expressly or impliedly set forth herein.

The Bylaws which govern and control the said Corporation, Biven's South, Inc., are attached hereto and marked Exhibit "B" and by reference made a part hereof.

5. Assessments. The Board of Directors of the Corporation shall approve annual budgets in advance for each fiscal year and the budgets shall project anticipated income and estimated expenses in sufficient detail to show separate estimates for insurance for fire and extended coverage, vandalism and malicious mischief, for the Units and the Common Property and public liability insurance for the Common Property, operating expenses, maintenance expenses, repairs, utilities, bonded termite protection, replacement reserve, and reasonable operating reserve for the Common Property or any other items the Board deems proper. The Board of Directors shall from time to time impose special assessments as may be necessary for the continued maintenance and continuity of the Condominium. Failure of the Board to include any item in the annual budget shall not preclude the Board from levying an additional assessment in any calendar year for which the budget has been projected. Each Unit Owner shall be liable for a proportionate share of the common expenses as set forth herein.

The total regular annual assessment for each fiscal year assessed against each Unit (and the interest in Lot A appurtenant thereto), and all members owning an interest in each Unit, shall be as follows: (Dollar amounts actually assessed on the basis of the following percentages may be rounded off to the nearest half dollar or full dollar at the discretion of the Board of Directors.)

Unit No.Percentage Portion

101	.850
102	.850
103	.850
104	.850
105	.850
106	.850
107	1.150
108	1.150
109	1.229
110	1.229
111	1.229
112	1.450
114	1.450
115	1.450
116	1.450
117	1.450
118	1.450
119	1.450
120	1.229
121	1.229
122	1.229
123	1.229
124	1.150
125	1.150
126	.850
127	.850
128	.850
129	.850
130	.850
131	.850
201	.850
202	.850
203	.850
204	.850
205	.850
206	.850
207	1.150
208	1.150
209	1.229
210	1.229
211	1.229
212	1.229
214	1.450
215	1.450
216	1.450
217	1.450
218	1.450
219	1.450
220	1.229
221	1.229
222	1.229
223	1.150
224	1.150
225	.850
226	.850
227	.850
228	.850
229	.850
230	.850
231	.850

<u>Unit No.</u>	<u>Percentage Portion</u>
301	.850
302	.850
303	.850
304	.850
305	.850
306	.850
307	1.150
308	1.150
309	1.229
310	1.229
311	1.229
312	1.229
314	1.450
315	1.450
316	1.450
317	1.450
318	1.450
319	1.450
320	1.230
321	1.230
322	1.230
323	1.230
324	1.150
325	1.150
326	.850
327	.850
328	.850
329	.850
330	.850
331	.850

After adoption of a budget and determination of the annual assessment per Unit, the Corporation shall assess such notice thereof to the Voting Member representing each Unit at such Member's most recent address as shown by the books and records of the Corporation. One-twelfth (1/12th) of the annual assessment shall be due and payable in advance to the Corporation on the first day of each month regardless of whether or not Members are sent or actually receive a written notice thereof. In addition, the Corporation shall have the power to levy special assessments against each Unit, if necessary, to cover the afore-said types of expenses and shall have the power to levy other special assessments as provided herein which shall be on a percentage basis as hereinabove provided.

The record Owners of each Unit shall be personally liable, jointly and severally, to the Corporation for the payment of all assessments, regular or special, made by the Corporation and for all costs of collection of delinquent assessments. In the event assessments against a Unit are not paid within sixty (60) days after their due date, the Corporation may elect to declare all past due installments of maintenance and all installments to become due during the remainder of such fiscal year then due and payable in full, as if such aggregate sum had originally been stipulated to so become due and payable in full, and the Corporation shall have the right to foreclose its lien for such assessments.

Assessments that are unpaid for over thirty (30) days after due date shall bear interest at the rate of nine percent (9%) per annum until paid.

The Association shall have a lien on each Condominium Parcel (the term "Condominium Parcel" shall include the Condominium Unit and the interest in the common elements) for any unpaid assessments and interest thereon, against the Unit Owner of such Condominium Parcel. The said lien shall be effective from and after the time of recording in the public records of Alachua County, Florida (the same being the county in which the Condominium is located) of a claim of lien stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the date when due, and the said lien shall continue in effect until all sums secured by the lien shall have been fully paid. All such claims of lien shall be signed and verified by an officer or agent of the Association. Where any such lien shall have been paid in full, the party making payment thereof shall be entitled to receive a satisfaction of such lien in such form that it may be recorded in the public records of Alachua County, Florida. Any and all such liens herein provided for shall be subordinate to the lien of a mortgage or other lien recorded prior to the time of recording of the claim of lien. The Board of Directors may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien and may settle and compromise the same if in the best interests of the Association. The delinquent Owner shall pay all costs, including reasonable attorneys' fees, for filing any action or suit enforcing and foreclosing a lien, and the lien shall be deemed to cover and secure such costs and fees. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien and to apply as credit against said bid all sums due the Association which are covered by the lien enforced.

As to priority between the lien of a recorded mortgage and the lien for any assessment, the lien for an assessment shall be subordinate and inferior to any recorded Institutional First Mortgage, regardless when said assessment was due, but not to any other mortgage. For the purposes of this instrument, an "Institutional First Mortgage" shall be defined as a First Mortgage originally executed and delivered to a bank, savings and loan association, insurance company authorized to transact business in the State of Florida, Real Estate Investment Trust, or Massachusetts Business Trust. Upon the recordation of the Certificate of Title issued pursuant to the foreclosure of an Institutional First Mortgage, or deed in lieu of foreclosure, any lien for assessments due and payable prior to such recordation shall be deemed abolished, but the lien for assessments due and payable after the recordation of said Certificate shall not be impaired and shall be effective as to the grantee of such Certificate shall not be impaired and shall be effective as to the grantee of such Certificate of Title.

Any person who acquires an interest in a Unit, except through foreclosure of "an Institutional First Mortgage," shall be personally liable and jointly and severally liable with the grantor, for all unpaid assessments up to the time of the transfer of ownership. In the event a Member exercises his rights of first refusal or redemption, hereinafter provided, said Member shall be liable for the unpaid assessments against the Unit and shall have the right to deduct such sums from the first refusal or redemption price paid to the seller or transferor.

Any person purchasing or encumbering a Unit shall have the right to rely upon any statement made in writing by a corporate officer regarding assessments against Units which have already been made and which are due and payable to the Corporation, and the Corporation and the Members shall be bound thereby. No action or suit shall be brought to enforce by foreclosure any lien arising

under this Declaration after two (2) years from the due date of any assessment therefor.

The Corporation may at any time require Owners to maintain a minimum balance on deposit with the Corporation to cover future assessments. Said deposit shall be uniform for similar units, in accordance with the percentages set out hereinabove, and shall in no event exceed three (3) months' assessment.

Anything in this Declaration, or the exhibits attached hereto, to the contrary notwithstanding, the provisions of said Declaration and exhibits attached hereto shall not become applicable, effective or binding insofar as the management of the Condominium or the levying of assessments is concerned, until actual management of the Condominium Project is delivered and turned over by the Developer to the non-profit corporation mentioned hereinabove, which shall not be later than May 1, 1975. Provided, however, that transfer of control of the Corporation by the Developer shall be in accordance with the following schedule, notwithstanding the fact that same may occur prior to May 1, 1975: when Unit Owners other than the Developer own 15% or more of the 90 units that will be operated ultimately by the Corporation, the Unit Owners other than the Developer shall be entitled to elect not less than 1/3 of the members of the Board of Directors of the Corporation. Unit Owners other than the Developer shall be entitled to elect not less than a majority of the members of the Board of Directors three years after sales by the Developer have been closed on 75% of the 90 units, or three months after sales have been closed by the Developer on 90% of the 90 units, or when all of the units that will be operated ultimately by the Association have been completed, and some of them have been sold, and none of the others is being offered for sale by the Developer in the ordinary course of business, whichever shall first occur. The Developer shall be entitled to elect not less than one member of the Board of Directors of the Corporation as long as the Developer holds for sale in the ordinary course of business any units in the Condominium Project. Until a turnover or transfer of control is perfected as set out above, the Developer shall retain management of the Condominium Project, and in so doing, shall collect all assessments, the same being payable to the Developer during this interim. Developer hereby guarantees that the monthly maintenance fee while it is managing the development shall be as follows:

Each 1.1 one bedroom unit	\$35.00
Each 2.1 two bedroom unit:	\$47.00
Each 2.2 two bedroom unit	\$50.00
Each 3.2 three bedroom unit	\$60.00

During this interim the Developer shall not be required to collect monthly maintenance fees from itself which are attributable to any units which it still owns and which it has not titled out to purchasers, and it may use any portion of the maintenance fees which it does collect for capital improvements, as well as maintenance expenses, so long as the said capital improvements are to the Condominium Project. The Developer shall, during this interim, have a lien on each Condominium Parcel for any unpaid assessments and interest thereon, against the Unit Owner and Condominium Parcel, and have the same remedies of personal action and/or foreclosure of said lien to perfect collection as given the Association above.

6. Sale, Rental, Lease or Transfer. Prior to the sale, rental, lease, or transfer of any interest in a Unit and Lot A to any person, the Owner of said Unit shall notify the Board of Directors of the Corporation, in writing, of the name and address of the person to whom the proposed sale, rental, lease or transfer is to be made, and such other information as may be required by the Board of Directors of the Corporation. The term, "transfer," as used herein shall include any sale, rental, lease or transfer of any nature. Within five (5) days after receipt of such notice, any one of three (3) members of the Board of Directors, appointed specifically for this purpose by the President of the Corporation, shall either approve or disapprove of a proposed transfer, in writing, and shall notify the Owner of his decision. In the event the committee fails to act or disapproves of the proposed transfer, and if the Member still desires to so transfer, he shall, 30 days before

such transfer, give written notice to the Secretary of the Corporation of his intention to transfer on a certain date, and the bona fide price and other terms thereof, and the Corporation, through one of its officers, shall promptly notify the Members of the date, price and terms. Members shall have the first right over non-members to accept such transfer at the bona fide price and on the terms contained in the notice, provided they so notify the Secretary of the Corporation in writing of acceptance at least ten (10) days before the date of the intended transfer, which information the Corporation shall promptly forward to the Owner. In the event the Member giving notice receives acceptance from more than one Member, preference shall first be given to the members owning a Unit horizontally contiguous to the Unit being transferred, but if all other conditions are equal, it shall be discretionary with the Member giving notice to consummate the transfer with whichever of the accepting Members he chooses, and nothing hereinabove shall be construed as precluding a group of Members from purchasing a Unit.

In the event the Member giving notice receives no written notice from any Member accepting his price and terms of the proposed transfer, on or before then (10) days before the day given in the notice as the day of the transfer, then that Member may complete the transfer within a reasonable time of the day and at the price or terms given in his notice, but at no other price or terms without repeating the procedure outlined above. In the event a Member makes a transfer without first complying with the terms hereof, any other Member shall have the right to redeem from the transferee, subject to termination, according to the provisions hereof. The Member's or Members' redemption rights shall be exercised by the Member or Members reimbursing the transferee for the monies expended and immediately after such reimbursement said transferee shall convey all of his right, title and interest to the Member or Members making the redemption.

An affidavit of the Secretary of the Corporation stating that the transfer of the Unit and interest in Lot A to certain persons was approved in all respects on a certain date, shall be conclusive evidence of such facts and from the date of approval as stated in the affidavit, the redemption rights herein afforded the Members shall terminate.

An affidavit of the Secretary of the Corporation stating that the Board of Directors was given proper notice on a certain date of a proposed transfer, and that the approval committee disapproved or failed to act on such proposed transfer, and that thereafter all the provisions hereof which constitute conditions precedent to a subsequent transfer of a Unit and Lot A interest have been complied with and that the transfer of a particular Unit and Lot A interest to particularly named persons does not violate the provisions hereof, shall be conclusive evidence of such facts for the purpose of determining the status of those persons' title to the Unit and Lot A interest transferred. Such affidavit shall not be evidence of the fact that the subsequent transfer to such persons was made at the price, terms and date stated in the notice given to the Secretary, but one hundred fifty (150) days after date of the notice to the Board of Directors as stated in the affidavit the redemption rights herein afforded the Members shall terminate.

Notwithstanding anything to the contrary herein, the provisions of the entire Section 6 shall not be applicable to purchases at foreclosures or other judicial sales, to transfers to or from "Institutional First Mortgagees," transfers from or to the Developer, nor corporate grantee of all property in this Condominium, which said grantee shall be considered as Developer

as hereinabove set out; nor transfers wherein an officer of the Development Corporation, acts as agent, or if said Corporations shall be legally dissolved, wherein any one of the Developers or a member of the last Board of Directors, their administrators or assigns, is acting as agent. The Developer and Institutional First Mortgagees shall have the right to transact any business necessary to consummate sales of Condominium Parcels, including but not limited to the right to maintain models, have signs identifying the Condominium Property and advertising the sale of Condominium Parcels, have employees in the offices, models and recreation buildings and other Common Property, and use the elevators and Common Elements, and to show Units. Sales office furnishings in the model apartment, signs, and items pertaining to sales shall not be considered Common Elements and shall remain the property of the Developer. Further the Developer and its employees shall have the right to exclusive possession of the model apartment and sales office, and Developer shall further have the right for any such apartment to remain as a model until such time as all Condominium Parcels have been sold.

The provisions of this Section 6 shall not apply to transfers by a Unit Owner to any member of his immediate family (viz. spouse, children or parents), nor to devise by will or inheritance under the law.

An Owner of a Unit may not transfer his interest in said Unit more than twice in any calendar year, and then only his undivided interest in the Common Property to said purchaser.

An Owner of a Unit may not lease or rent his interest in said Unit more than twice in any calendar year, and then only in conformance with the provisions of this Section 6; provided, however, that said rentals may be for any term agreed upon between the Unit Owner and lessee and approved as set out hereinabove.

The purpose of the covenants in this section is to maintain a congenial residential community, non-transitory in nature, and this covenant shall exist until this Declaration is modified or until the Condominium Apartment Project is terminated as hereinafter provided.

7. Obligations of Members. Every Owner of an interest in one of the Units shall (in addition to other obligations and duties set out herein):

- (a) Promptly pay the assessments levied by the Corporation.
- (b) Maintain in good condition and repair his Unit and all interior surfaces within or surrounding his Apartment Unit (such as the surfaces of the walls, ceilings, floors) and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit. Said Unit shall be maintained in accordance with this Declaration and exhibits hereto, except for changes or alterations approved in writing by the Corporation.
- (c) Not use or permit the use of his Unit for any purpose other than as a residential unit and maintain his Unit in a clean and sanitary manner.

- (d) Not make or cause to be made any structural addition or alteration to his Unit or to the Common Property without prior written consent of the President of the Developer Corporation (or a majority of the Board of Directors of the non-profit Corporation, if management of the Condominium has been turned over to it).
- (e) Not permit or suffer anything to be done or kept in his Unit which will increase the insurance rates on his Unit or the Common Property or which will obstruct or interfere with the rights of other Members or annoy them by unreasonable noises or otherwise; nor shall a Member commit or permit any nuisance, immoral or illegal act in his Unit or in or on the Common Property.
- (f) Conform to and abide by the Bylaws and uniform rules and regulations in regard to the use of Units and Common Property which may be adopted in writing from time to time by the Board of Directors of the Corporation, and to see that all persons using Owner's Property by, through or under him do likewise.
- (g) Allow the Board of Directors or the agents and employees of the Corporation to enter any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within Units or the Common Property or in case of emergency threatening Units or the Common Property, to determine compliance with these Restrictions, Reservations, Covenants, Conditions and Easements and the Bylaws of the Corporation.
- (h) Show no sign, advertisement or notice of any type on the Common Property or his Unit and erect no exterior antennas and aerials except as provided under uniform regulations promulgated by the Corporation. This sub-paragraph (h) shall not apply to the Developer and/or Institutional First Mortgagees.
- (i) Plumbing and electrical repairs within a Unit shall be paid for and be the financial obligation of the Owners of the Unit, whereas the Corporation shall pay for and be responsible for repairs and electrical wiring within the Common Property.
- (j) Allow children under twelve (12) years of age to occupy the Pool, Pool Patio and Recreation Room area only if supervised personally by an adult. Also, there shall be no excessive noise made by any individual in these areas or any area enclosed within this Condominium.
- (k) Not permit or suffer anything to be done or kept in his Unit which will cause structural stress or danger to his Unit or any other Unit such as water beds, or other heavy items.

8. Enforcement of Maintenance. In the event Owners of a Unit fail to maintain it as required herein or make any structural addition or alteration without the required written consent, the Corporation or an Owner with an interest in any Unit shall have the right to proceed in a court of equity to seek compliance with the provisions hereof. The Corporation shall have the right to levy at any time a special assessment against the Owners of the Unit and the Unit for the necessary sums to put the improvements within the Unit in good condition and repair or to remove any unauthorized structural addition or alteration. After making such assessment, the Corporation shall have the right to have its employees and agents enter the Unit at any time to do such work as deemed necessary by the Board of Directors of the Corporation to enforce compliance with the provisions hereof.

The Board of Directors of the Corporation may enter into a contract with any firm, person or corporation for the maintenance and repair of the Condominium Property and may join with other condominium corporations on contracting with the same firm, person or corporation for maintenance and repair.

The Corporation shall determine the exterior color scheme of all buildings and shall be responsible for the maintenance thereof, and no Owner shall paint an exterior wall, door, window, patio or any exterior surface, etc. at any time without the written consent of the Corporation.

In the event the Corporation fails to maintain the Common Property, in accordance with its obligations hereunder, any Owner of an interest in any Unit, or Institutional First Mortgagee of a Unit, shall have the right to seek specific performance in a court of equity to compel the Corporation to do so, or in the event of emergency repairs needed to utilities, walls, etc., the Owner of an interest in any Unit may give the Corporation twenty-four (24) hours' notice to repair same, and if it is not done, said Owner may proceed to contract in his own name to make such repairs and the Corporation shall be obligated to reimburse said Owner for the reasonable value of the repairs which were necessary and for which the Corporation has financial responsibility.

9. Destruction of Improvements and Insurance. The Corporation shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance with a company acceptable to Institutional Holders of Mortgages on Units, insuring all of the insurable improvements erected within Biven's Lake Estates South, a Condominium, for the full replacement value and the premium for such coverage and all other insurance deemed desirable by the Corporation, shall be assessed against the Owners of such Unit as part of the annual assessment. The Corporation shall annually make a survey and thereby determine replacement costs for insurance purposes for all then existing improvements for the ensuing year. On the basis of said survey, the Corporation shall continue to maintain the necessary fire and extended coverage and vandalism and malicious mischief insurance to assure complete replacement or repair to damaged improvements as hereinabove set forth. The original policy shall be held by the Corporation, with Institutional First Mortgagees to be named in the policy as their interest may appear, and certification of insurance shall be furnished to them.

In the event a loss occurs to any improvements within any of the Units alone, or in the event that a loss occurs to improvements within or upon the contiguous Common Property or under the policy shall be made jointly to the Corporation and to the Institutional Holders of Mortgages on Units including Institutional First Mortgagees and said proceeds shall be expended or disbursed as follows:

(a) All Corporate officers and employees handling funds shall be bonded at least to the full extent of the insurance proceeds and other funds on hand, and all payees shall endorse the insurance company check to the Corporation, and the Corporation will promptly contract for the necessary repairs to the improvements within the Common Property and within the damaged Units. Notwithstanding anything to the contrary herein contained, so long as Guardian Mortgage Investors still owns and holds a mortgage on the property which shall have been damaged and for which insurance proceeds are to be paid, all to Guardian Mortgage Investors and the Corporation, and the Corporation agrees to negotiate a contract for repair and restoration as set forth in subparagraph (b) below.

(b) The improvements shall be completely restored and repaired. The Corporation shall negotiate and obtain a contractor willing to do the work on a fixed price basis and shall disburse the insurance proceeds and other funds in accordance with the progress payments contained in the contract between the Corporation and the contractor, which construction contract shall be subject to written approval of the Institutional Mortgagee or Mortgagees holding a mortgage or mortgages on any damaged individual Unit or Units. However, where the Condominium Project has been abandoned, as hereinafter provided for, the insurance proceeds shall be disbursed by the Corporation to the Owners and Mortgagees of the individual Units as their interests appear.

Under all circumstances the Corporation hereby has the authority to act as the agent of all Owners for the purpose of compromising or settling insurance claims for damage to improvements within the Units or the Common Property; provided, however, that Guardian Mortgage Investors shall have the right to approve all such settlements, and such approval shall not be unreasonably withheld. The Corporation shall also obtain public liability insurance covering all of the Common Elements included in Lot A and insuring the Corporation and the Common Owners as its and their interests appear, in the minimum amount of \$300,000.00, \$500,000.00 and \$50,000.00.

In the event insurance proceeds received by the Corporation are insufficient in amount to repair the damage to the Units or Common Property, the Owners of all Units shall pay for the additional amount necessary to repair such damage on a pro-rata basis in accordance with the provisions set forth in Section 5, Assessments.

10. Termination of the Condominium Project. At any time when there has been total loss of the Units and improvements on the Common Property and the Members by majority vote, vote to abandon the Condominium Project, said Project shall be abandoned.

Additionally, at any time upon the written unanimous consent of all Voting Members and all Owners and Holders of Institutional First Mortgage Liens on any Units, the Condominium Project may be abandoned for any reason whatsoever, whether or not any destruction to property has occurred.

Immediately after the required vote or consent to terminate, each and every Unit Owner shall immediately convey by Warranty Deed to the Corporation all of said Unit Owner's right, title and interest to any Unit and to the Common Property,

provided the Corporation's officers and employees handling funds have been adequately bonded and the Corporation or any Member shall have a right to enforce such conveyance by compelling specific performance in a court of equity.

The Board of Directors of the Corporation shall then sell all of the Property at public or private sale upon terms approved in writing by all of the Institutional First Mortgagees. Upon the sale of said Property the costs, fees and charges for effecting said sale, the cost of liquidation and dissolution of the Corporation, if any, and all obligations incurred by the Corporation in connection with the management and operation of the Property up to and including the time when distribution is made to the Unit Owners, shall be paid out of the proceeds of said sale, and the remaining balance (hereinafter referred to as "net proceeds of sale") shall be distributed to the Unit Owners in the manner now about to be set forth.

The distributive share of each Unit Owner in the net proceeds of sale, though subject to the provisions hereinafter contained, shall be the same percentage portions as set forth and enumerated in Section 5. Assessments hereinabove. Likewise, the distributive share of each Unit Owner in any common surplus shall be in the same percentage portions.

Upon the determination of each Unit Owner's share, as above provided for, the Corporation shall pay out of each Unit Owner's share all mortgages and other liens encumbering said Unit in accordance with their priority and, upon such payment being made, all mortgagees and lienors shall execute and record satisfactions or releases of their liens against said Unit or Units, regardless of whether the same are paid in full. Thereupon, the Directors of the Corporation shall proceed to liquidate and dissolve the Corporation, and distribute the remaining portion of each distributive share, if any, to the Owner or Owners entitled thereto. If more than one person has an interest in a Unit, the Corporation shall pay the remaining distributive share allocable to said Unit to the various Owners of such Unit, excepting that if there is a dispute as to the validity, priority or amount, of mortgages or liens encumbering a Unit, then payment shall be made to the Owner and/or Owners of such Unit and to the Owners and Holders of the Mortgages and liens encumbering said Unit.

As evidence of the Members' resolution to abandon passed by the required vote or written consent of the members, then President and Secretary of the Corporation shall effect and place in the public records of Alachua County, Florida, an affidavit stating that such resolution was properly passed or approved by the members and also shall record the written consents, if any, of Institutional First Mortgagees to such abandonment.

After such an affidavit has been recorded and all Owners have conveyed their interest in the Condominium Parcel to the Corporation and the Corporation to the Purchaser, the title to said Property thereafter shall be free and clear from all the restrictions, reservations, covenants, conditions and easements set forth in this Declaration and the Purchaser and subsequent grantees of any of said Property shall receive title to said lands free and clear thereof.

11. Modification, Invalidation and Operation. These restrictions, reservations, covenants, conditions and easements may be modified or amended by recording such modification in the public records of Alachua County, Florida, signed by all the Owners of seventy-two (72) or more Units and by all Owners and Holders of First Mortgage Liens on any Units and by all Owners and First Mortgagees, except unanimous consent of the Owners shall be necessary to change the vote or consent necessary to terminate the Condominium Project, and further except that, with the consent of all Institutional First Mortgagees, the Developer reserves the right to amend, alter or annul any of the covenants, restrictions or conditions

of this Declaration, until eighty (80%) percent of the Units have been sold and titled out to individual purchasers; and further, except that the Developer, or if said Corporation has been legally dissolved, then any one of the Developers, or a member of the last Board of Directors, their administrators or assigns, must approve in writing any modification or amendment of Section 6, entitled "Sale, Rental, Lease or Transfer" hereinabove, until one hundred percent (100%) of the Units are sold and titled out to individual purchasers.

Invalidation of any of these restrictions, reservations, covenants, conditions and easements, or any provision contained in this Declaration of Biven's Lake Estates South, a Condominium, or in a conveyance of a Unit by the Developer, by judgment, court order, or law shall in nowise affect any of the other provisions which shall remain in full force and effect.

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

These restrictions, reservations, covenants, conditions and easements shall be binding upon and inure to the benefit of all Property Owners and their grantees, heirs, personal representatives, successors and assigns, and all parties claiming by, through or under any member.

12. Subordination. No breach of any of the provisions contained herein shall defeat or adversely affect the lien of any mortgage at any time made in good faith and for a valuable consideration upon said property or any part thereof and made by a bank, savings and loan association, insurance company authorized to transact business in the State of Florida, Real Estate Investment Trust or Massachusetts Business Trust, and engaged in the business of making loans constituting a first lien upon real property, but the rights and remedies herein granted to the Developer, the Corporation, and the Owner or Owners of any part of said Condominium, may be enforced against the Owner of the portion of said Property subject to such mortgage notwithstanding such mortgage. The purchaser at any sale upon foreclosure shall be bound by all of the provisions herein contained, unless said purchaser be an Institutional First Mortgagee which had a mortgage on said Unit at the time of the institution of said foreclosure action, or the Developer.

13. Improvements. Subsequent to the original construction, improvements and additions to the Common Property may be made by the Corporation levying a special assessment, provided, however, no such special assessment shall be levied for improvements which shall exceed one-third (1/3) of the current regular annual assessment, unless prior written unanimous consent is received from all Voting Members.

14. Interpretation. Whenever the context so requires, the use of any gender shall be deemed to include all genders and the use of the plural shall include the singular, and the singular

shall include the plural.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a condominium.

15. Remedies for Violations. For violation or a breach of any provisions of this Declaration by a person claiming by, through or under the Developer, or by virtue of any judicial proceedings, the Corporation, and the Members thereof, or an Institutional First Mortgagee, or any of them, severally, shall have the right to proceed at law for damages or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them, or for such other relief as may be appropriate. In addition to the foregoing right, the Corporation shall have the right whenever there shall have been built within the Condominium any structure which is in violation of this Declaration, to enter upon the property where such violation of this Declaration exists, and sumarily abate or remove the same at the expense of the Owner; provided, however, the Corporation shall then make the necessary repairs, improvements where such violation occurred so that the property shall be in the same condition as it was before said violation occurred, and any such entry and abatement or removal shall not be deemed a trespass. The failure promptly to enforce any of the provisions of this Declaration shall not bar their subsequent enforcement.

16. Rights of Construction Mortgagee.

Developer has obtained a construction loan (the "Loan") in the amount of \$2,000,000.00 from the Trustees of Guardian Mortgage Investors ("GMI") a Massachusetts Business Trust under Declaration of Trust dated March 29, 1966, as amended, for the purpose of constructing the Condominium improvements, which Loan is secured by a mortgage (the "Mortgage") recorded in Official Record Book 831 Page 286, in the Office of the Clerk of the Circuit Court of Alachua County, Florida. If GMI, its nominee, designee, or any purchaser acquires title to any portion of the Condominium Property by reason of foreclosure of the Mortgage or conveyance to GMI, its nominee, designee, or any other purchaser by deed in lieu of foreclosure of the Mortgage, (i) GMI, its nominee, designee or such other purchaser shall succeed to all of the rights of and benefits accruing to the Developer under the Condominium Documents and GMI, its nominee, designee, or such other purchaser shall be entitled to exercise all of the rights of and benefits accruing to the Developer under the Condominium Documents as if GMI, its nominee, designee, or such other purchaser was originally named as the Developer in the Condominium Documents, (ii) GMI, its nominee, designee, or such other purchaser shall have the immediate right to remove any and all directors and officers of the Association, anything in the Condominium Documents to the contrary notwithstanding and thereupon GMI, its nominee, designee, or such other purchaser shall have the right to appoint directors and officers of the Association, anything in the Condominium Documents to the contrary notwithstanding, (iii) GMI, its nominee, designee, or such other purchaser shall have the right to designate the agent to receive service of process upon the Association.

IN WITNESS WHEREOF, BIVEN'S CENTER, INC. has caused these presents to be signed in its name by its President,

and its corporate seal affixed, attested by its Secretary, this
17 day of MAY, 1974.

BIVEN'S CENTER, INC.

By Fred Konstand
Fred Konstand, President

Attest:

James F. Lang
James F. Lang,
As its Secretary

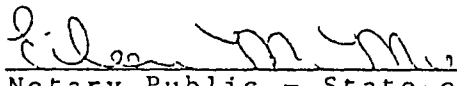


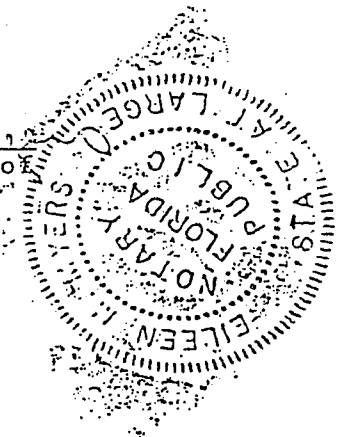
STATE OF FLORIDA

COUNTY OF ALACHUA

BEFORE ME, the undersigned authority, personally appeared FRED KONSTAND and JAMES F. LANG, well known to be the President and Secretary respectively of the Corporation named in the foregoing instrument, and that they severally acknowledged executing the same freely and voluntarily under authority duly vested in them by said Corporation and that the seal affixed thereto is the true corporate seal of said Corporation.

WITNESS my hand and official seal at Gainesville, Alachua County, Florida, this 17th day of May, 1974.


Notary Public - State of
Florida
My commission expires:
Notary Public, State of Florida
My Commission Expires Jun. 2, 1977
Bonded by American Fire & Casualty Co.



(notarial seal)

AMENDMENT TO CONDOMINIUM DECLARATION

Section 1.

Section 7 of the DECLARATION OF RESTRICTIONS, RESERVATIONS, COVENANTS, CONDITIONS AND EASEMENTS OF BIVEN'S LAKE ESTATES SOUTH, A CONDOMINIUM is hereby amended by adding the following to the end thereof.

In order to more effectively enforce the rules and regulations set forth in this Declaration and in the Bylaws of Biven's South, Inc. the Board of Directors of Biven's South, Inc. shall be empowered to levy fines for the violation of those rules which fines shall become a lien on the unit in violation. The said lien shall be effective from and after the time of recording in the public records of Alachua County, Florida of a claim of lien stating the description of the Condominium Parcel, the name or the record Owner, the amount assessed and the date assessed and a verified statement of an officer of the Biven's South, Inc. that the procedures provided herein have been complied with. The said lien shall continue in effect until all sums secured by the lien shall have been fully paid. Assessments made hereunder which are not paid within 30 days of notice to the owner by certified mail shall accrue interest at the rate of nine percent per year from that date until paid. Where any such lien shall have been paid in full, the party making payment thereof shall be entitled to receive a satisfaction of such lien in such form that it may be recorded in the public records of Alachua County, Florida. Any and all such liens herein provided for shall be subordinate to the lien of a mortgage or other lien recorded prior to the time of recording the claim of lien. The Board of Directors of Biven's South, Inc. may take such action as it deems necessary to collect assessments made hereunder by personal action or by enforcing and foreclosing said lien and may settle and compromise the same if in the best interests of the Condominium. The delinquent owner shall pay all costs, including a reasonable attorneys' fee, for filing any action or suit enforcing and foreclosing a lien, and the lien shall be deemed to cover and secure such costs and fees.

As to priority between the lien of a recorded mortgage and the lien for any assessment, the lien for an assessment shall be subordinate and inferior to any recorded Institutional First Mortgage, regardless when said assessment was due, but not to any other mortgage.

Prior to the assessment of any lien for violation of rules hereinbefore the Complainant must appear, and set forth, the charged party shall be entitled to an impartial hearing before the Board of Directors of Biven's South, Inc. At such time as the Board of Directors becomes cognizant of a violation the President shall notify the unit owner of the alleged violation by certified mail, specifying the nature of the violation alleged. This notice shall include the place, date, and time of the next succeeding meeting of the Board of Directors at which the matter will be heard. At the time and place so specified, the Board of Directors shall hear any evidence presented and make a determination regarding the existence of a violation. An affirmative vote of not less than two thirds of the total membership of the Board shall be required to determine the existence of a violation. This shall not be construed to limit the Board's right to continue consideration of the matter until its next scheduled meeting but in no event shall a determination be made later than 120 days after the receipt by the charged party of the notice required herein unless a postponement of the determination is requested by the charged party and granted by the Board.

In the event of a continuing violation, each day shall be deemed to constitute a separate offense.

Upon the determination by the Board of Directors that a violation has been committed, the following assessments shall apply:

First Offense -- Written warning

Second Offense -- Not more than \$25

Third Offense -- Not more than \$50

Subsequent Offenses -- Not more than \$100

The above sequence of assessments shall only apply where the same violation has been committed on more than one occasion.

For the purposes hereof, a unit shall be considered in violation when the owner, a member of his family, a lessee, or other guest of the owner shall be in violation of a duly adopted rule.