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DECLARATION OF CONDOMINIUM  
ESTABLISHING  
WEST PASSAGE  
A CONDOMINIUM

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CLERK OF CIRCUIT COURT  
INDIAN RIVER CO., FLA  
BY *William J. Schmitt* D.C.

This Instrument Prepared by:  
Charles R. McKinnon  
McKinnon & Stewart, Chartered  
P. O. Box 760  
Vero Beach, Florida 32960

DECLARATION OF CONDOMINIUM

OF

WEST PASSAGE

A CONDOMINIUM

Indian River County, Florida

Made this 15<sup>th</sup> day of October, 19 79, by  
THE MOORINGS DEVELOPMENT COMPANY, a Florida Corporation, herein-  
after called the "DEVELOPER", for itself, its successors or  
assigns.

WHEREIN the Developer makes the following declarations:

I

PURPOSE

The purpose of this Declaration is to submit the land describ-  
ed in this instrument and improvements on such lands to the condo-  
minium form of ownership and use in the manner provided by Chapter  
718, Florida Statutes, hereinafter called the "Condominium Act",  
and the Developer does hereby submit the property to condominium  
ownership.

II

NAME

The name by which this condominium is to be identified is  
WEST PASSAGE, a Condominium.

III

THE LAND

The land owned by the Developer, which by this instrument is  
submitted to the condominium form of ownership, is located in  
Indian River County, Florida, and is described as follows:

Lots 122, 123, 124 and the North 28 feet of Lot 121,  
THE MOORINGS, UNIT II, according to the plat thereof  
filed in the Office of the Clerk of the Circuit Court  
of Indian River County, Florida, in Plat Book 8, Page  
28C.

IV

DEFINITIONS

The terms used in this Declaration and in its Exhibits, and  
in all amendments thereto, shall have the meanings stated in the  
Condominium Act and as follows unless the context otherwise re-  
quires.

(A) Apartment means units as defined by the Condominium Act.

(B) Apartment Owner means unit owner, as defined by the  
Condominium Act.

(C) Assessment means a share of the funds required for the  
payment of common expenses which, from time to time, is assessed  
against the apartment owner.

(D) Association means WEST PASSAGE ASSOCIATION, INC., a  
Florida corporation not for profit, and its successors and assigns,  
responsible for the operation of the condominium.

(E) Common Elements means the portions of the condominium property not included in the apartment units and tangible personal property required for the maintenance and operation of the condominium.

(F) Limited Common Elements means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units, and as the term is used herein, shall mean and comprise that portion of the condominium property consisting of thirty-one (31) covered parking facilities and thirty-one (31) docking spaces.

(G) Common Expenses include:

(a) Expenses of administration, expenses of maintenance, operation, repair or replacement of the common elements, limited common elements or additional facilities, if any, and of the portions of the apartments to be maintained by the Association.

(b) Expenses declared common expenses by provisions of this Declaration or the Bylaws of the Association.

(c) Any valid charge against the condominium property as a whole.

(H) Common Surplus means the excess of all receipts of the Association over the common expenses.

(I) Condominium means that form of ownership of property under which units or improvements are subject to ownership by different owners; and there is appurtenant to each unit, as a part thereof, an undivided share in the common elements.

(J) Condominium Property means and includes the land of the condominium, all improvements thereon, and the common elements, limited common elements, and all easements and rights appurtenant thereto.

(K) Institutional Mortgage means a mortgage held by a bank, savings and loan association, insurance company, or union pension fund authorized to do business in the State of Florida.

(L) Utility Services as used in the Condominium Act and as construed with reference to this condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air-conditioning, garbage and sewage disposal and telephones.

(M) Singular, Plural Gender. Whenever the context so permits, the use of plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

V

# DEVELOPMENT PLAN

The condominium is described and established as follows:

(A) Survey. A survey of the land showing the apartment buildings on it, common elements and limited common elements upon the land is attached as Exhibit A.

(B) Graphic Description and Plot Plans. A plot plan and other documents showing a graphic description of the condominium property in sufficient detail to identify each apartment, the common elements and the limited common elements and which provide accurate representations of their locations and dimensions are

attached as Exhibit B. For the purpose of identification all apartments in the buildings located upon said land are given identifying numbers and no apartment bears the same identifying number as does any other apartment.

(C) Certificate. A certificate of a surveyor authorized to practice in the State of Florida, certifying that the construction of the improvements described is sufficiently complete so that, with the aforementioned survey, plot plans and graphic descriptions, together with the wording of the Declaration, such descriptions are an accurate representation of the location and dimensions of the improvements described, and further that with such material there can be determined therefrom the identification, location and dimensions of each apartment and the common elements and limited common elements, is attached as Exhibit C.

(D) Amendment of Plans.

(a) Alteration of Apartment Plans. The Developer reserves the right to change the interior design and arrangement of all apartments and to alter the boundaries between apartments, as long as Developer owns the apartments so altered. No such change will increase the number of apartments nor alter the boundaries of the common elements or limited common elements, without amendment of this Declaration in the manner described in Article XIX hereof. If the Developer shall make any changes in apartments, as herein authorized, such changes will be reflected by an amendment of this Declaration; and if more than one apartment is concerned, the Developer will apportion between the apartments the shares in the common elements appurtenant to the apartments concerned.

(b) Amendment of Declaration. An amendment of this Declaration reflecting such authorized alteration of apartment plans by Developer need be signed and acknowledged only by the Developer and need not be approved by the Association, apartment owners or lienors or mortgagees of apartments or of the condominium, whether or not elsewhere required for an amendment.

(E) Easements. Each of the following easements is a covenant running with the land of the Condominium, to-wit:

(a) Utilities. As may be required for utility services in order to adequately serve the Condominium; provided, however, easements through a unit shall be only according to the plans and specifications for the building containing the unit or as the building is actually constructed, unless approved, in writing, by the apartment owner. An easement shall exist throughout the common elements and limited common elements for the purpose of installation, maintenance, repair and replacement of all sewer, water, power and telephone pipes, lines, mains, conduits, wires, poles, transformers and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system.

(b) Traffic. An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies, elevators, center cores, and other portions of the common elements as may be from time to time intended and designated for such purpose and use and as may be necessary to provide reasonable access to public ways, and for vehicular and pedestrian traffic over, through and across such portions of the common elements as may from time to time be paved and intended for such purpose and as may be necessary to provide reasonable access to public ways; and such easement shall be for the use and benefit of the apartment owners, institutional mortgagees, and/or tenants in the Condominium, or members of their respective families and their social

guests; provided, however, nothing herein shall be construed to give or create in any person the right to park upon any portion of the common elements of the condominium property except to the extent that space may be specifically designated and assigned for parking purposes.

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

(F) Improvements - General Description.

(a) Apartment Building. The condominium includes three (3) two and/or three-story buildings, containing thirty-one (31) condominium units. Each apartment is assigned a number which is indicated on the exhibits attached hereto. The first floor apartments in the north building are numbered consecutively from 101 through 104, the second floor apartments are numbered consecutively from 201 through 204 and the third floor apartments are numbered consecutively from 302 through 304. The first floor apartments in the center building are numbered consecutively from 105 through 108, the second floor apartments are numbered consecutively from 205 through 207 and the third floor apartments are numbered consecutively from 305 through 307. The first floor apartments in the south building are numbered consecutively from 108 through 111, the second floor apartments are numbered consecutively from 208 through 211 and the third floor apartments are numbered consecutively from 308 through 310. Following the number of each unit in each building are the letters A, B and C, which indicate the type of unit design. Apartments are numbered consecutively in each building from North to South.

(b) Other Improvements may include, but are not limited to, landscaping, automobile parking areas, walkways and entrance ways, all of which are part of the common elements, except as is stated otherwise herein.

(G) Apartment boundaries. Each apartment will include that part of the building containing the apartment that lies within the boundaries of the apartment, which boundaries are as follows:

(a) Upper and lower boundaries. The upper and lower boundaries of the apartment shall be the following boundaries, extended to an intersection with the perimetrical boundaries:

(1) Upper Boundary - the plane of the lowest surfaces of the unfinished ceiling slab, including the slab over a balcony, deck, loggia, terrace, porch, canopy, stairway or other portion of the building serving only the apartment being bounded. In a unit containing a room in which the ceiling is raised above the level of the ceiling in the rest of the unit, the ceiling slab shall include the vertical slab or wall connecting the raised ceiling with the ceiling of the remaining portion of the unit, and the upper boundary shall include the plane of the unfinished surface of the vertical slab or wall that joins the planes of the lowest surfaces of the unfinished horizontal portions of the ceiling slabs.

(2) Lower Boundary - the plane of the lowest surfaces of the unfinished floor slab, including the floor slab over a balcony, deck, loggia, terrace, porch, canopy, stairway or other portion of the building serving only the apartment being bounded. In a unit containing a room in which the floor is raised above the level of the floor in the rest of the unit, the floor slab shall include the vertical slab or wall connecting the raised floor with the floor of the remaining portion of the unit, and the lower shall include the plane of the unfinished surface of the vertical slab or wall that joins the planes of the lowest surfaces of the unfinished horizontal portions of the floor slabs.

(b) Perimetrical boundaries. The perimetrical boundaries of the apartments will be the following boundaries extended to an intersection with the upper and lower boundaries:

(1) Exterior building walls - the intersecting vertical planes adjacent to and which include the exterior of the outside walls of the apartment building bounding an apartment and fixtures thereon; and when there is attached to the building a deck, balcony, loggia, terrace, porch, canopy, stairway or other portion of the building serving only the apartment being bounded, except and excluding, however, external access stairways, such boundaries will be the intersecting vertical planes adjacent to and which include all of such structures and fixtures thereon.

(2) Interior building walls - the vertical planes of the center line of walls bounding an apartment extended to intersections with other perimetrical boundaries, with the following exceptions:

(i) If interior building walls separate apartments from common elements or limited common elements, the perimetrical boundaries as to such walls will be the intersecting vertical planes adjacent to and including the surfaces thereof facing the common elements or limited common elements.

(ii) If walls between apartments are of varying thickness, or abut a column or shaft, the plane of the center line of a bounding wall will be extended to an intersection with the connecting bounding plane without regard to the plane of the center line of an intervening column or shaft.

(iii) If walls of different thickness abut with a flush side so that their center lines do not intersect, the plane of the center line of the thinner wall will be extended into the thicker wall for a distance which is one-half the thickness of the thinner wall, and the boundary will thence run at right angle to the plane of the center line of the thicker wall.

(iiii) If exterior faces of apartment walls are diametrically opposite from each other, the perimetrical boundary of such apartments will proceed through the intersection of such walls at an angle of forty-five degrees from exterior face to exterior face.

(H) Common Elements. The common elements of the condominium consist of the land and all other parts of the condominium property not within the apartments, or which are not specified as limited common elements, and all tangible personal property which is used in the maintenance and operation of the condominium. The apart-

ment owner shall not be deemed to own pipes, wires, conduits, or other public utility transmission devices running through any condominium apartment which are utilized for or serve more than one condominium apartment, which items are, by these presents, hereby made a part of the common elements.

## VI

### OWNERSHIP OF COMMON ELEMENTS

Each apartment owner shall have the right to use in common with the other apartment owners the common elements. Each apartment shall have a one-thirty-first (1/31st) undivided share in the common elements.

As each condominium apartment is purchased, the Developer shall assign to each apartment one (1) covered parking facility and one (1) boat docking space. Once said covered parking facility and docking space are assigned by the Developer, then said covered parking facility and boat docking space, as limited common elements, shall be deemed as appurtenances to said condominium apartment to which it was assigned, and such covered parking facility and boat docking space may not thereafter be separately conveyed, hypothecated, transferred, encumbered or otherwise dealt with, and title thereto shall pass only with title to the unit to which it is appurtenant.

The assignment of said covered parking facility and docking space by the Developer shall be by an instrument in writing and executed with the formalities of a deed, and recorded in the public records of Indian River County, Florida, which said assignment may be made by separate instrument or by inclusion in any instrument of conveyance of an apartment. Upon such assignment of the covered parking facility and docking space, as a limited common element to an apartment, the owner of such apartment shall have the exclusive right to the use thereof without separate charge therefor by the Association. The cost of maintenance and administration of the limited common elements shall be included as part of the common expense applicable to all apartments for purposes of assessment. Neither the Association nor any party shall change the covered parking facility or docking space once the same has been attributed to a condominium apartment. Upon the assignment of the same by the Developer to an apartment owner the covered parking facility and docking space shall become an appurtenance to said apartment and shall be encumbered by and subject to any mortgage then or thereafter encumbering said condominium apartment and upon the conveyance of or passing of title to the condominium apartment to which such assignment is made, such exclusive right shall pass as an appurtenance thereto in the same manner as the undivided interest in the common elements appurtenant to such apartment.

The fee title to each apartment will include both the apartment and its undivided interest in the common elements, and its interest in the limited common elements appurtenant thereto; said interests to be deemed to be conveyed or encumbered with its respective apartment, even though the description in the instruments of conveyance or encumbrance may refer only to the fee title to the apartment. Any attempt to separate the fee title to an apartment from the undivided interest in the common elements or limited common elements appurtenant to such apartment, shall be null and void.

The common elements may be enlarged by an amendment to this Declaration that includes the description of land owned by the Association and by the Association submitting the said land to the terms of this Declaration as a common element. The amendment shall be approved and executed in the manner required by this Declaration and shall be executed by the Association. Such an amendment shall divest the Association of title to the land and shall vest the title in the Apartment Owners, without naming them and without

further conveyance, in the same undivided shares as the undivided shares in the common elements that are appurtenant to the apartments owned by them.

#### VII

##### ADDITIONAL FACILITIES

The Association may own and hold fee simple title to lands, within reasonable proximity to the condominium property, upon which recreational facilities, entrance ways, walkways, automobile parking areas, and like facilities are or may be constructed. Such facilities are for the use and benefit of the apartment owners, institutional mortgagees, and/or tenants in the condominium, or members of their respective families and their social guests. The Association shall assess each separate condominium apartment for its pro rata share of the cost and expenses of operation and maintenance of said facilities based on each apartment's share of the common expenses as is set forth below, and such assessed expenses shall be considered common expenses of the condominium apartment.

#### VIII

##### COMMON EXPENSES AND COMMON SURPLUS

The common expenses of the condominium and any common surplus of the Association shall be shared and owned by the apartment owners in the same proportions as their interest in all of the common elements, as is set forth in Article VI. These ratios shall remain regardless of the purchase price of the apartment, their locations or the square footage included in each apartment, except as otherwise set forth herein.

#### IX

##### MAINTENANCE, ALTERATION AND IMPROVEMENT

Responsibility for the maintenance of the condominium property and restrictions upon its alteration and improvements shall be as follows:

##### (A) Apartments.

(a) By the Association. The Association will maintain, repair and replace:

(1) All portions of condominium property, except interior surfaces of apartments, which portions shall include but not be limited to the outside walls of the apartment buildings and all fixtures thereon, boundary walls of apartments, floors, load bearing columns and load bearing walls. Such will be done at the expense of the Association, unless made necessary by the negligence of any apartment owner, members of his family, or his, her or their guests, employees, agents or lessees. In the event of such negligence, it will be done by the Association at the expense of said apartment owner.

(2) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portions of an apartment to be maintained by the Association; and all such facilities contained within an apartment that service part or parts of the condominium other than the apartment within which the same is contained. Such will be done at the expense of the Association unless made necessary by the negligence of an apartment owner, members of his family, or his, her or their guests, employees, agents or lessees. In the event of such negligence, it will be done by the Association at the expense of said apartment owner.



(3) All incidental damage caused to apartments by such work will be promptly repaired by the Association, at the expense of the party responsible for the expense of such work.

(b) By the apartment owners. The responsibility of the apartment owners will be as follows:

(1) To immediately maintain, repair and replace all portions of apartments and the fixtures and equipment contained within apartments, except the portions thereof to be maintained, repaired and replaced by the Association. Such will be done at the expense of the owner of the apartment where the work is done.

(2) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building or the surfaces of interior building walls facing common elements or limited common elements without the prior written approval of the Board of Directors of the Association.

(3) To promptly report to the Association any defect or need for repairs for which the Association is responsible.

(c) Insurance Proceeds. The liability of the Association and apartment owners for maintenance, repair and replacement, as aforesaid, will be reduced to the extent by which such expenses are met by the proceeds of insurance carried by the Association.

(d) Alteration and Improvement. Except as elsewhere reserved to the Developer, no structural alterations will be made in the portions of any apartment to be maintained by the Association, without the prior written approval of the owners of apartments in which such work is to be done and of the Board of Directors of the Association. A copy of plans for all such work prepared by an architect licensed to practice in the State of Florida, will be filed with said Board of Directors prior to the start of such work.

(B) Common Elements.

(a) By the Association. The maintenance, repair, replacement and operation of the common elements, limited common elements and additional facilities will be the responsibility of the Association and a common expense, unless made necessary by the negligence of any apartment owner, members of his family, or his, her or their guests, employees, agents or lessees. In the event of such negligence, it will be done by the Association at the expense of said apartment owner.

(b) Alteration and Additions. Except as herein reserved to the Developer, there will be no alterations or additions to the common elements or limited common elements without prior approval in writing by the record owners of all of the apartments. Provided, however, that any alterations or additions to the common elements, or limited common elements, bearing the approval in writing of the record owners of not less than seventy-five percent (75%) of the common elements and which does not interfere with the rights of any owners without their consent, may be done if the owners who do not approve are relieved from the initial cost of such alteration or addition. The share of any cost of such alteration or addition not so assessed will be assessed to the other apartment owners in the shares that their share in the common expenses bear to each other. There will be no change in the shares or rights of an apartment owner in the common elements altered or further improved, whether or not the apartment owner contributes to the cost of such alteration or addition.

X

ASSESSMENTS

The making and collection of assessments against apartment owners for common expenses will be pursuant to the Bylaws of the Association, as supplemented by the following provisions:

(A) Share of Common Expense. Each apartment owner will be liable for a proportionate share of the common expenses, and will share in the common surplus, as provided for in Article VIII of this Declaration.

(B) Interest; Application of Payments. Assessments and installments on such assessments, which are paid on or before ten days after date when due, will not bear interest, but all sums not paid on or before ten days after the date when due will bear interest at the rate of ten percent (10%) per annum from the date when due until paid. All payments upon account will be first applied to interest and then to the assessment payment first due.

(C) Lien for Assessments. The Association will have a lien upon each apartment and upon all tangible personal property located within each apartment for any unpaid assessments, together with interest, except that such liens shall be subordinated to bona fide liens recorded in the public records of Indian River County, Florida, prior to the recording therein of claims of liens for such unpaid assessments. Reasonable attorney's fees incurred by the Association incident to the collection of such assessments for the enforcement of such liens, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien will be payable by the apartment owner and secured by such liens.

(D) Collections and Foreclosure. The Association may take such action as it deems necessary to collect assessments by personal action against the apartment owner, or by enforcing and foreclosing said liens, and may settle and compromise the same, if in the best interests of the Association. The Association, through its Board of Directors, will be entitled to bid at any sale held pursuant to a suit to foreclose any lien; and at any sale held pursuant to a suit to foreclose an assessment lien, it may apply as a cash credit against its bid all sums due the Association covered by the lien enforced. In case of the foreclosure of an assessment lien, the owner of a unit apartment subject to the lien shall be required to pay a reasonable rental for the unit apartment to the Association from the date the foreclosure action is commenced, and the Association shall be entitled to the appointment of a receiver to collect the same.

(E) Additional Assessments. Should the Association take action to collect delinquent assessments by personal action or by enforcing and foreclosing its lien, if during such action against a delinquent apartment owner additional or future assessments become due on the delinquent apartment owner's apartment and are not promptly paid, then, in such event, said additional or future assessments shall be covered by the Association's lien and claim of lien recorded pursuant to Florida law for the initial unpaid assessment, without the necessity of any further action on the part of the Association, and likewise, said additional or future assessments may be collected by the Association in its initial action as if said additional or future assessments were initially made a part thereof.

(F) Liability of Mortgagee, Lienor or Judicial Sale Purchaser for Assessments. Where the mortgagee of an institutional first mortgage of record acquires title to an apartment as a re-

sult of such foreclosure, or where said mortgagee accepts a deed to an apartment in lieu of foreclosure, such acquirer of title, his heirs, executors, legal representatives, successors and assigns, will not be liable for the share of common expenses or assessments by the Association pertaining to such apartment or chargeable to the former owner of such apartment which became due prior to such acquisition of title. Such unpaid share of common expenses or assessments will be deemed to be common expenses, collectible from all of the apartment owners, including such acquirer of title, his heirs, executors, legal representatives, successors and assigns.

Any person who acquires an interest in an apartment, except as hereinabove described, shall not be entitled to its occupancy or to the enjoyment of its common elements or limited common elements until all unpaid assessments due and owing by the former owner have been paid.

(G) Assignment of Claim and Lien Rights. The Association will have the right to assign its claim and lien rights for the recovery of any unpaid assessment to the Developer, or to any apartment owner or group of apartment owners, or to any third party.

## XI

### ASSOCIATION

The operation of the condominium will be by the Association which will fulfill its functions pursuant to the following provisions:

(A) Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit F.

(B) Bylaws. The Bylaws of the Association shall be the Bylaws of the Condominium, a copy of which is attached hereto as Exhibit G.

(C) Modification or Amendment of Bylaws. No modification or amendment to the Bylaws of the Association shall be valid unless set forth in or annexed to a duly recorded amendment to this Declaration. The Bylaws may be amended in the manner provided for therein, but no such amendment shall be adopted, which would affect or impair the validity or priority of the record owner of any mortgage covering any apartment, unless said mortgagee shall join in the execution of the amendment.

(D) Limitation upon Liability of the Association. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to apartment owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association or caused by the elements or other owners or persons.

(E) Restraint upon Assignment of Shares in Assets. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment.

(F) Voting Rights of Apartment Owner. Each Apartment Owner shall be entitled to at least one vote as a member of the Association, pursuant to the terms of the Articles of Incorporation and Bylaws of the Association.

## XII

### INSURANCE

The insurance, other than title insurance, that shall be carried upon the condominium property and the property of the apartment owners will be governed by the following provisions:

(A) Authority to Purchase; Named Insured. All insurance policies upon the condominium property will be purchased by the Association. The named insured will be the Association individually and as agent for the apartment owners, without naming them. Provision will be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of apartment owners. Such policies will provide that payments by the insurer for losses will be made to the Insurance Trustee designated below, and all policies and their endorsements will be deposited with the Insurance Trustee. Apartment owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expense.

(B) Coverage.

(a) Casualty. All buildings and improvements upon the land, and additional facilities as defined in Article VII, shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and all personal property included in the common elements will be insured for its value, as determined by the Association. Such coverage will afford protection against:

(1) Loss or damage by fire and other hazards, covered by a standard extended coverage endorsement; and,

(2) Such other risks as from time to time will be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

(b) Public Liability in such amounts and with such coverage as shall be required by the Association, including but not limited to hired automobile and nonowned automobile coverages and with cross liability endorsement to cover liabilities of the apartment owners as a group to an apartment owner.

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

(d) Such other insurance as the Association shall determine from time to time to be necessary or desirable.

(C) Premiums. Premiums upon insurance policies purchased by the Association will be paid by the Association as a common expense.

(D) Insurance Trustee; Share of Proceeds. All insurance policies purchased by the Association will be for the benefit of the Association and the apartment owners and their mortgagees as their interest may appear, and will provide that all proceeds covering property losses will be paid to such bank in Florida with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which Trustee is referred to in this instrument as the Insurance Trustee. The Insurance Trustee will not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee will be to receive such proceeds as are paid and hold the proceeds in trust for the purposes elsewhere stated in this instrument and for the benefit of the apartment owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

(a) Common Elements. Proceeds on account of damage to common elements or additional facilities as defined in Article VII, an undivided share for each apartment owner, such share being the same as the undivided share in the common elements appurtenant to his apartment.

(b) Apartments and Limited Common Elements. Proceeds on account of damage to apartments and limited common elements will be held in the following undivided shares:

(1) When the building is to be restored - for the owners of damaged apartments and limited common elements in proportion to the cost of repairing the damage suffered by each apartment owner, which cost will be determined by the Association.

(2) When the building is not to be restored - an undivided share for each apartment owner, such share being the same as the undivided share in the common elements, appurtenant to his apartment.

(c) Mortgagees. In the event a mortgagee endorsement has been issued as to an apartment, the share of the apartment owner will be held in trust for the mortgagee and the apartment owner as their interests may appear; provided, however, that no mortgagee will have any right to determine or participate in the determination as to whether or not any damaged property will be reconstructed or repaired, and no mortgagee will have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distribution of such proceeds made to the apartment owner and mortgagee pursuant to the provisions of this Declaration.

(E) Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee will be distributed to or for the benefit of the beneficial owners in the following manner:

(a) Expense of the Trust. All expenses of the Insurance Trustee will be paid first, or provisions made for such payment.

(b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds will be paid to defray the cost of such as elsewhere provided. Any proceeds remaining after defraying such costs will be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by such mortgagee.

(c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which proceeds are paid will not be reconstructed or repaired, the remaining proceeds will be distributed to the beneficial owners, remittance to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by such mortgagee.

(d) Certificate. In making distribution to apartment owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the apartment owners and their respective shares of the distribution.

(F) Association as Agent. The Association is irrevocably appointed agent for each apartment owner and for each owner of a mortgage or other lien upon an apartment and for each owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

### XIII

#### RECONSTRUCTION OR REPAIR AFTER CASUALTY

(A) Determination to reconstruct or repair. If any part of the condominium property shall be damaged by casualty, whether or

not it will be reconstructed or repaired will be determined in the following manner:

(a) Common Elements, etc. If the damaged improvement is a common element, limited common element, or additional facilities as defined in Article VII, the damaged property will be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium will be terminated.

(b) Apartments.

(1) Lesser Damage. If the damaged improvement is an apartment or apartments and if apartments to which fifty percent (50%) of the common elements are appurtenant are found by the Association to be tenantable, the damaged property will be reconstructed or repaired unless within sixty (60) days after the casualty the owners of seventy-five percent (75%) of the common elements agree in writing that the condominium will be terminated.

(2) Major damage. If the damaged improvement is an apartment or apartments and if apartments to which more than fifty percent (50%) of the common elements are appurtenant are found by the Association to be not tenantable, then the damaged property will not be reconstructed or repaired and the condominium will be terminated without agreement as elsewhere provided, unless within sixty (60) days after the casualty the owners of seventy-five percent (75%) of the common elements agree in writing to such reconstruction or repair.

(c) Certificate. The Insurance Trustee may rely upon a certificate of the Association to determine whether or not the damaged property is to be reconstructed or repaired.

(B) Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building; or if not, then according to plans and specifications approved by the Board of Directors of the Association; and if the damaged property is an apartment or apartments, by the owners of not less than seventy-five percent (75%) of the common elements, including the owners of all damaged apartments, which approval will not be unreasonably withheld.

(C) Responsibility. If the damage is only to those parts of an apartment for which the responsibility of maintenance and repair is that of the apartment owner, then the apartment owner will be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty will be that of the Association.

(D) Estimate of costs. Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair the Association will obtain reliable and detailed estimates of the cost to rebuild or repair.

(E) Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments will be made against the apartment owners who own the damaged apartments, and against all apartment owners in the case of damage to common elements, limited common elements or additional facilities, in sufficient amounts to provide funds for the payment of such costs. Such assessments against apartment owners for damage to apartments will be in proportion to the cost of reconstruction and repair of their respective apartments; and such assessments on account of damage to common elements, limited common elements and additional facilities will be in proportion to the owner's share in the common elements.

(F) Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which will consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against apartment owners will be disbursed in payment of such costs in the following manner:

(a) Association. If the total of the assessments made by the Association in order to provide funds for the costs of reconstruction and repair that is the responsibility of the Association is more than \$10,000.00, then the sums paid will be deposited with the Insurance Trustee. In all other cases, the Association will hold the sums paid and disburse them 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 on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(1) Association - lesser damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than \$50,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the Insurance Trustee by a mortgagee that 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 provided for the reconstruction and repair of major damage.

(2) Association - major damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is more than \$50,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Association and upon approval of an architect qualified to practice in the State of Florida and employed by the Association to supervise the work.

(3) Apartment Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an apartment owner shall be paid by the Insurance Trustee to the apartment owner, or if there is a mortgagee endorsement as to the apartment, then to the apartment owner and the mortgagee jointly, who shall use such proceeds as they may be advised, for said reconstruction and repair.

(4) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair will be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated, except, however, that the part of a distribution to a beneficial owner that is not in excess of assessments paid by such owner into the construction fund will not be made payable to any mortgagee.

(5) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether or not sums paid will be deposited with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are

to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amount to be paid. Instead, the Insurance Trustee may rely upon a certificate of the Association as to any or all of such matters and stating the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required in this instrument to be named as payee, the Insurance Trustee shall also name the mortgagee as a payee of any distribution of insurance proceeds to an apartment owner; and further provided that when the Association, or a mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

(G) Right of Entry For Maintenance of Common Elements. Whenever it is necessary to enter any apartment for the purpose of performing any maintenance, alteration or repair to any portion of the common elements, or to go upon any limited common elements for such purpose, the owner of each apartment shall permit other owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such apartment, or to go upon the limited common elements constituting an appurtenance to any such apartment, for such purpose, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

(H) Right of Entry into Apartments in Emergencies. In case of any emergency originating in or threatening any apartment, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the Building Superintendent or Managing Agent, shall have the right to enter such apartment for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate, and to facilitate entry in the event of any such emergency, the owner of each apartment, if required by the Association, shall deposit under the control of the Association a key to such apartment.

#### XIV

#### USE RESTRICTIONS

The use of the condominium property shall be in accordance with the following provisions, as long as the condominium exists and the apartment buildings in useful condition exists upon the land:

(A) Apartments. Each of the apartments shall be occupied as a single family private dwelling by the owner, the members of his family, and his social guests, and for no other purpose and except as reserved to Developer, no apartment may be divided or subdivided into a smaller unit or otherwise transformed without first amending this Declaration to show the changes in the apartments to be affected.

No animals or pets of any kind shall be kept in any apartment, or on any property of the condominium, except with the written consent of the Board of Directors of the Association and thereafter under the rules and regulations adopted by such Board; provided that they will not be kept, bred or maintained for any commercial purpose and further provided that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property, upon three (3) days' written notice from said Board.

The apartment owners shall not cause anything to be hung, displayed or placed on the exterior walls, doors or windows of the apartment building and shall not otherwise change the appearance of any portion of the exterior of the apartment building, and common



element or limited common element, or the surfaces of interior building walls facing common elements or limited common elements, without the prior written consent of the Board of Directors of the Association. No clothes lines or similar devices, and no "For Sale" signs, shall be allowed on any part of the condominium property without the written consent of said Board.

The Association shall determine the exterior color scheme of the buildings and all exteriors, and no owners shall paint an exterior wall, door, window or any exterior surface, or replace anything thereon or affixed thereto, without the written consent of the Association.

Automobiles may be parked in the parking areas of the condominium property adjacent to or near the apartment building but only in accordance with the regulations of the Board of Directors of the Association. No other vehicles and objects, including but not limited to trucks, motorcycles, trailers and boats, will be parked or placed upon such portions of the condominium property unless permitted by said Board.

(B) Common Elements. The common elements shall be used only for the purpose for which they are intended.

(C) Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or make any use of the common elements, limited common elements, or additional facilities that will increase the cost of insurance upon said property.

(D) Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part of it; and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction, shall be observed. The individual or entity responsible for meeting the requirements of governmental bodies for maintenance, modification or repair of the condominium property shall be the same as the individual or entity responsible for the maintenance and repair of the property concerned.

(E) Leasing. After approval by the Board of Directors of the Association elsewhere required, entire apartments may be rented, provided the occupancy is only by the Lessee, members of his family, and his social guests. No rooms may be rented and no transient tenants may be accommodated. All leases must be for a minimum term of at least thirty (30) days.

(F) Rules and Regulations. Reasonable rules and regulations concerning other use of the condominium property may be made and amended from time to time by the Board of Directors of the Association. Copies of such rules and regulations will be furnished by said Board to all apartment owners and residents of the condominium, upon request.

(G) Use or Acquisition of Interest in the Condominium to Render User or Acquirer Subject to Provisions of Declaration of Condominium, Rules and Regulations. All present or future owners, tenants or any other person who might use the facilities of the Condominium in any manner are subject to the provisions of this Declaration of Condominium, and the mere acquisition or rental of any apartment, or the mere act of occupancy of any apartment, shall signify that the provisions of this Declaration of Condominium are accepted and ratified in all respects.

(H) Proviso. Provided, however, that until the Developer has completed all of the contemplated improvements, and closed

the sales of all of the apartments of the condominium, neither the apartment owners nor the Association, nor the use of the condominium property, will interfere with the completion of the contemplated improvements and the sale of the apartments. The Developer may make such use of the unsold units and common areas as may facilitate such completion and sale, including but not limited to maintenance of a sales office, the showing of the property, and the display of signs.

XV

MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the apartments, the transfer of apartments by any owner other than the Developer will be subject to the following provisions as long as the condominium exists and the apartment buildings in useful condition exists upon the land, which provisions each apartment owner covenants to observe:

(A) Transfer subject to approval.

(a) Sale. No apartment owner may dispose of an apartment or any interest in an apartment by sale without approval of the Board of Directors of the Association.

(b) Lease. No apartment owner may dispose of an apartment or any interest in an apartment by lease without approval of the Board of Directors of the Association.

(c) Gift, Devise or Inheritance. If any apartment owner shall acquire his title by gift, devise or inheritance, the continuance of his ownership of his apartment will be subject to the approval of the Board of Directors of the Association.

(d) Other Transfers. If any apartment owner shall acquire his title by any manner not considered in the foregoing sub-sections, the continuance of his ownership of his apartment will be subject to the approval of the Board of Directors of the Association.

(e) Unlawful Denials. No person shall be denied the right to purchase, lease or own an apartment because of race, religion, sex or national origin.

(B) Approval by Association. The approval of the Board of Directors of the Association that is required for the transfer of ownership of apartments will be obtained in the following manner:

(a) Notice to Association.

(1) Sale. An apartment owner intending to make a bona fide sale of his apartment or any interest in it shall give to the Board of Directors of the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as said Board may reasonably require. Such notice, at the apartment owner's option, may include a demand by the apartment owner that said Board furnish a purchaser of the apartment if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.

(2) Lease. An apartment owner intending to make a bona fide lease of his apartment or any interest in it shall give to the Board of Directors of the Association notice of such intention, together with the name and

address of the intended lessee, such other information concerning the intended lessee as said Board may reasonably require and an executed copy of the proposed lease.

(3) Gift, Devise or Inheritance; Other Transfers. An apartment owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Board of Directors of the Association notice of the acquiring of his title, together with such information concerning the apartment owner as said Board may reasonably require and a certified copy of the instrument evidencing the owner's title.

(4) Failure to Give Notice. If the above required notice to the Board of Directors of the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of an apartment said Board at its election and without notice may approve or disapprove the possession or ownership. If said Board disapproves the possession or ownership, it will proceed as if it had received the required notice on the date of such disapproval.

(b) Certificate of Approval.

(1) Sale. If the proposed transaction is a sale, then within sixty (60) days after receipt of such notice and information, the Board of Directors of the Association must either approve or disapprove the proposed transaction. If approved, the approval will be stated in a certificate executed by the President and Secretary of the Association, and shall be recorded in the public records of Indian River County, Florida.

(2) Lease. If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information, the Board of Directors of the Association must either approve or disapprove the proposed transaction. If approved, the approval will be stated in a certificate executed by the President and Secretary of the Association, and shall be recorded in the public records of Indian River County, Florida.

(3) Gift; Devise or Inheritance; Other Transfers. If the apartment owner giving notice has acquired his title by gift, devise or inheritance or in any other manner, then within sixty (60) days after receipt of such notice and information the Board of Directors of the Association must either approve or disapprove the continuance of the apartment owner's ownership of his apartment. If approved, the approval will be stated in a certificate executed by the President and Secretary of the Association, and shall be recorded in the public records of Indian River County, Florida.

(c) Approval of Corporate Owner or Purchaser. Inasmuch as the condominium may be used only for residential purposes and a corporation cannot occupy an apartment for such use, if the apartment owner or purchaser of an apartment is a corporation, the approval of ownership by the corporation may be conditioned by requiring that all persons occupying the apartments be approved by the Board of Directors of the Association.

(C) Disapproval by Association. If the Board of Directors of the Association shall disapprove a transfer of ownership or possession of an apartment, the matter shall be disposed of in the following manner:

(a) Sale. If the proposed transaction is a sale and if the notice of sale given by the apartment owner shall so demand, then within sixty (60) days after receipt of such notice and information the Board of Directors of the Association will deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by it who will purchase and to whom the apartment owner must sell the apartment upon the following terms:

(1) At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any Court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(2) The purchase price shall be paid in cash.

(3) The sale shall be closed within forty-five (45) days after the delivery or mailing of the agreement to purchase or within fifteen (15) days after the determination of the sale price if such is by arbitration, whichever is the later.

(4) A certificate approving the purchaser will be executed by the President and Secretary of the Association, and shall be recorded in the public records of Indian River County, Florida.

(5) If the Board of Directors of the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by it shall default in his agreement to purchase, then notwithstanding the disapproval, such ownership will be deemed to have been approved; and said Board shall furnish a certificate of approval as elsewhere provided, and shall have the same recorded in the public records of Indian River County, Florida.

(b) Lease. If the proposed transaction is a lease, the apartment owner shall be advised of the disapproval in writing, and the lease shall not be made.

(c) Gifts; Devise or Inheritance; Other Transfers. If the apartment owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within sixty (60) days after receipt from the apartment owner of the notice and information required to be furnished, the Board of Directors of the Association will deliver or mail by registered mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by it, who shall purchase and to whom the apartment owner must sell the apartment under the following terms:

(1) The sale price shall be the fair market value determined by agreement between the seller and purchaser within forty-five (45) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment;

and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any Court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(2) The purchase price shall be paid in cash.

(3) The sale shall be closed within thirty (30) days following the determination of the sale price.

(4) A certificate approving the purchaser will be executed by the President and Secretary of the Association, and shall be recorded in the public records of Indian River County, Florida.

(5) If the Board of Directors of the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, such ownership will be deemed to have been approved, and said Board shall have the same recorded in the public records of Indian River County, Florida.

(D) Mortgage. No apartment owner may mortgage his apartment nor any interest in it without the approval of the Board of Directors of the Association, unless it is an institutional mortgage or a mortgage to the Developer to secure a portion or all of the purchase price. The approval of any other mortgage may be upon conditions determined by said Board or may be arbitrarily withheld. VA and FHA mortgages are expressly prohibited.

(E) Exceptions. The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or a purchase by the holder of an institutional mortgage that acquires its title as the result of owning such mortgage or lien upon the apartment concerned; and this shall be so whether the title is acquired by deed from the apartment owner, his successors or assigns, or through foreclosure proceedings; nor shall such provisions apply to a transfer, sale or lease by the holder of an institutional mortgage that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to an apartment at a duly advertised public sale with open bidding provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale.

(F) Unauthorized Transactions. Any sale, mortgage or lease not authorized pursuant to the terms of this Declaration shall be void and invalid unless subsequently approved by the Board of Directors of the Association.

(G) Proviso. Provided, however, that Article XV, "Maintenance of Community Interests", shall be inapplicable to the Developer, the said Developer is irrevocably empowered to sell, lease, rent, and/or mortgage condominium apartments, and any portion thereof, to any purchaser, lessee or mortgagee approved by Developer, upon such terms and conditions as Developer may deem desirable.

#### XVI

#### COMPLIANCE AND DEFAULT

Each apartment owner, every member of his family, or his, her or their guests, employees, agents and lessees, shall be governed by and will comply with the terms and provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant to those documents. The Association, its Board of Directors or apartment owners shall be entitled to the following relief, in addition to the remedies provided by the Condominium Act or otherwise in order to enforce compliance:

(A) Relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or, if appropriate, by an aggrieved owner of an apartment.

(B) Negligence. An apartment owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his, her or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. An apartment owner shall pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy or abandonment of an apartment or its appurtenances, or of the common elements, limited common elements or additional facilities, by the apartment owner, any member of his family, or his, her or their guests, employees, agents or lessees.

(C) Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of an apartment owner or the Association to comply with the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant to those documents, as they may be amended from time to time, the prevailing party will be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the Court.

(D) No Waiver of Rights. The failure of the Association or its Board of Directors, or of any apartment owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation and Bylaws of the Association and the rules and regulations adopted pursuant to those documents will not constitute a waiver of the right to do so thereafter.

(E) Failure to Maintain Apartment and Unlawful Alterations. In the event an apartment owner fails to maintain his apartment as required herein, or makes any alteration without the required written consent, or otherwise violates or threatens to violate any provisions hereof, the Association shall have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof and in addition thereto, the Association shall have the right to levy an assessment against the apartment owner of an apartment and the apartment, for such necessary sums to remove any unauthorized addition or alteration, and to restore the property to good condition and repair. Said assessments shall have the same force and effect as all other assessments. The Association shall have the further right to have its employees or agents, or any subcontractors appointed by it, enter an apartment at any reasonable time to do such work as is deemed necessary by the Board of Directors of the Association, to enforce compliance with this provision.

(F) Remedies. All rights, remedies and privileges granted to the Association or the owner or owners of an apartment pursuant to any terms, provisions, covenants or conditions of this Declaration of Condominium or other above mentioned 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 available to such party at law or in equity.

# XVII

## NOTICE OF LIEN OR SUIT

(A) Notice of Lien. An apartment owner shall give notice to the Association of every lien upon his apartment other than for

permitted mortgages, taxes and special assessments within five (5) days after the owner's receipt of notice thereof.

(B) Notice of Suit. An apartment owner shall give notice to the Association of every suit or other proceeding which may affect the title to his apartment, such notice to be given within five (5) days after the apartment owner receives knowledge thereof.

(C) Notice of Action. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Apartment Owners, the Association shall give notice of the exposure within a reasonable time to all Apartment Owners who may be exposed to the liability and they shall have the right to intervene and defend the said action.

(D) Compliance. Failure to comply with this subsection concerning liens and suits shall not affect the validity of any sale.

#### XVIII

#### PROPORTIONATE CHANGES IN COMMON EXPENSES AND COMMON SURPLUS

In the event that any one or more of the apartments are not rebuilt by reason of the loss of lands as a result of destruction, condemnation or otherwise, and, therefore, the number of apartments are reduced, or in the event the Association becomes the owner of an apartment, then the proportionate share of the common expenses and the common surplus of each apartment remaining which is not owned by the Association shall be increased from one-thirty-first (1/31st) per apartment to the appropriate fraction having a denominator equal to the number of apartments then remaining and which are not owned by the Association. Upon the sale of an apartment by the Association a similar adjustment will be made to appropriately reduce the share of the common expenses and common surplus of each apartment.

#### XIX

#### AMENDMENTS

Except as elsewhere provided otherwise, this Declaration may be amended in the following manner:

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

(B) Resolution. A resolution for the adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either:

(a) by not less than a majority of the entire membership of the Board of Directors and by not less than seventy-five percent (75%) of the votes of the entire membership of the Association; or,

(b) until a majority of the Board of Directors are elected by the condominium owners, other than the Developer, by not less than a majority of the entire Board of Directors; provided the amendment does not increase the number of apartments or alter the boundaries of the common element.

(C) Recording. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be recorded in the public records of Indian River County, Florida.

(D) Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by all of the record owners of apartments in the condominium in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the public records of Indian River County, Florida.

(E) Proviso. Provided, however, that no amendment will discriminate against any apartment owner nor against any apartment or class or group of apartments, unless the apartment owners so affected shall consent; and no amendment will change any apartment nor decrease its share in the common elements appurtenant to it, nor increase the owner's share of the common expenses, (except as reserved to the Developer or as heretofore set forth), unless the record owner of the apartment concerned and all record owners of mortgages on such apartment shall join in the execution of the amendment; and no amendment will affect or impair the validity or priority of any mortgage covering any apartment, unless said mortgagee shall join in the execution of the amendment. Neither shall any amendment make any change in the sections hereof entitled "Insurance", "Reconstruction Or Repair After Casualty", or "Amendments", or in Paragraph XV (E) of the section entitled "Maintenance of Community Interests", unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment, or in Paragraph V (D) and XV (G) of the section entitled "Maintenance of Community Interests", unless the Developer shall join in the execution of the amendment.

XX

#### TERMINATION

This condominium may be voluntarily terminated in the manner provided for in the Condominium Act at any time. In addition thereto, if it is determined in the manner elsewhere provided that the apartments will not be reconstructed because of major damage, the condominium plan of ownership shall be terminated without agreement.

XXI

#### SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or any other provision of this Declaration of Condominium, the Articles of Incorporation and Bylaws of the Association, or the regulations of the Association, shall not affect the validity of the remaining portions.

XXII

#### CAPTIONS

The paragraphs contained herein are for convenience only and do not define, limit or construe the contents of such paragraphs and are in no way to be construed as a part of this Declaration.

IN WITNESS WHEREOF, the Developer has caused these presents



to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

Signed, Sealed and Delivered in the presence of:

Judge N. Matthey  
Diino Maudlin  
As to Developer

THE MOORINGS DEVELOPMENT COMPANY

BY Joe Pinal President

ATTEST Dorothy C. Hudson Secretary

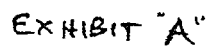
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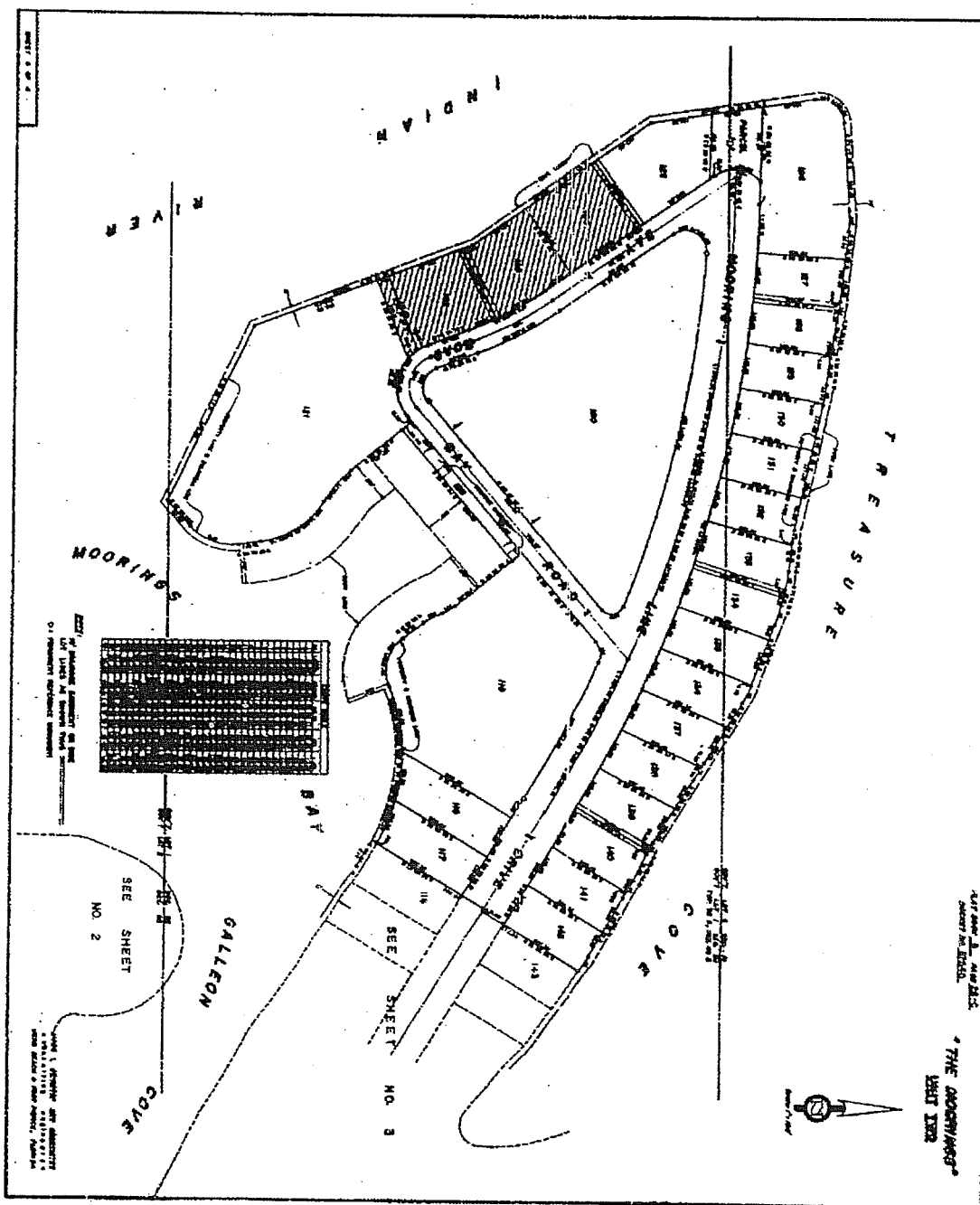
STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Jorge Gonzalez and Dorothy C. Hudson, well known to me to be the President and Asst Secretary respectively of the corporation named as Developer in the foregoing Declaration of Condominium, and that they severally acknowledged executing the same in the presence of two subscribing witnesses 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 in the County and State last aforesaid this 1st day of October, 1979.

Harold L. Williamson  
Notary Public, State of Florida at  
Large. My Commission Expires 8/28/83





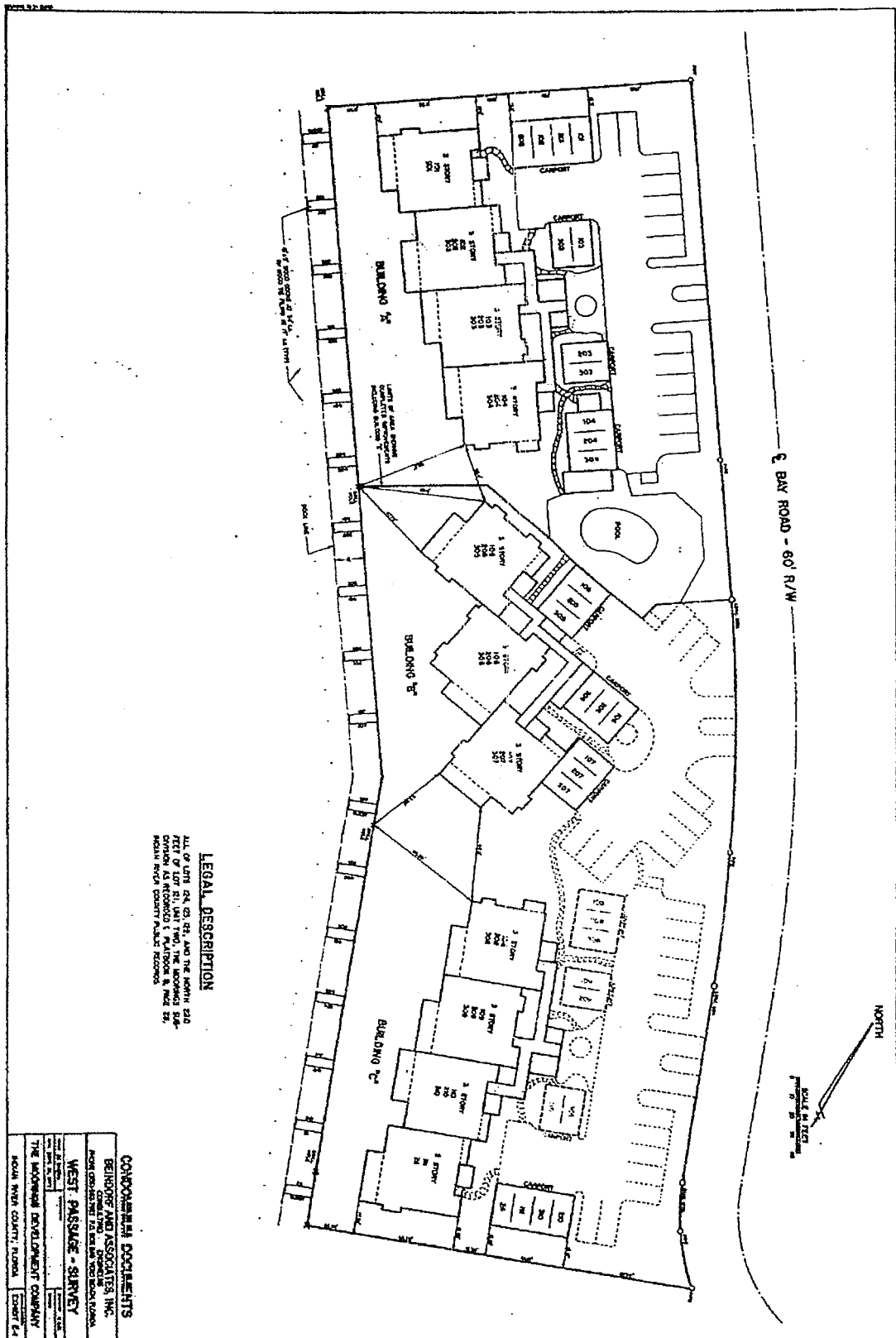
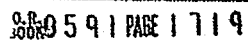
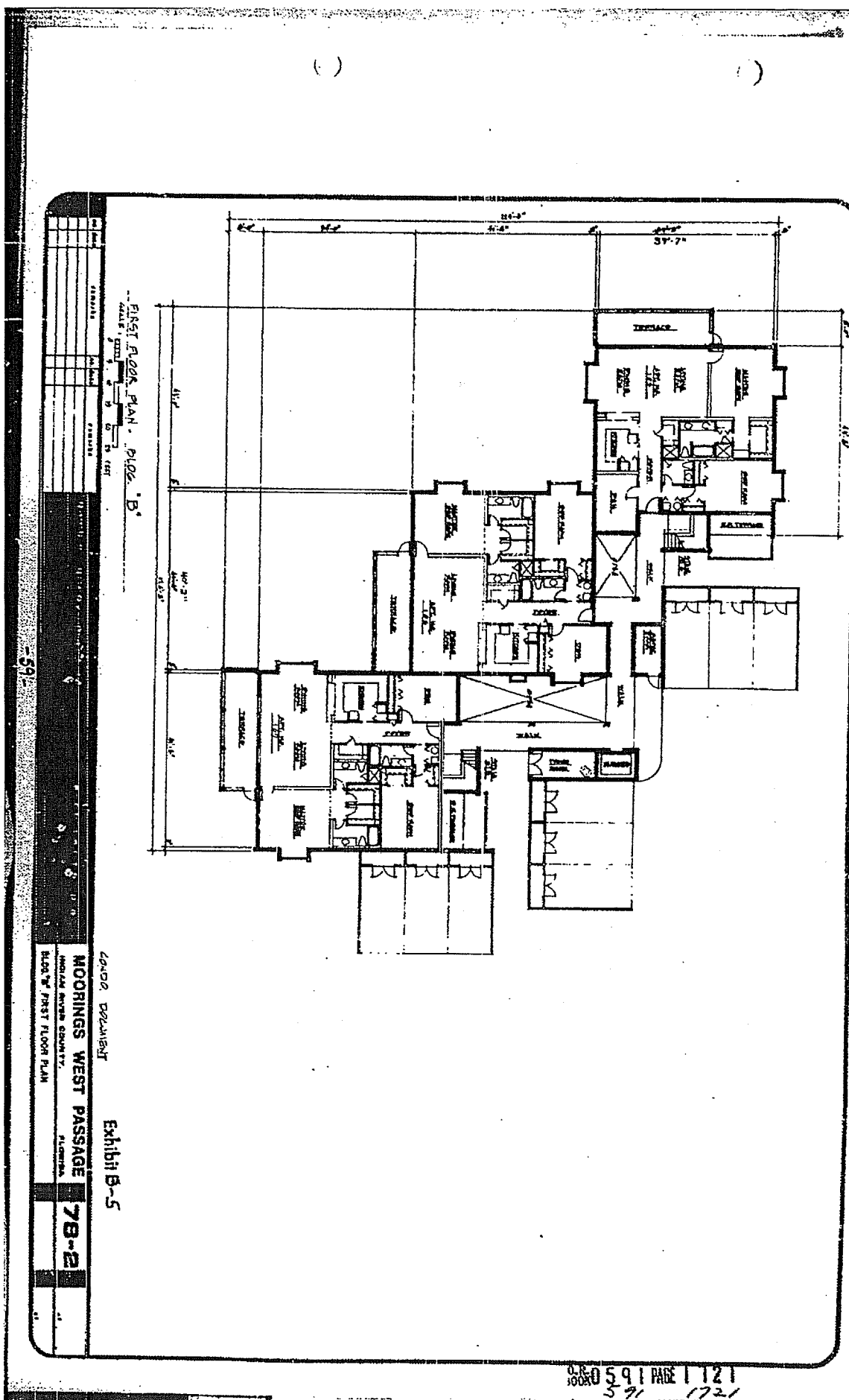


EXHIBIT "B"

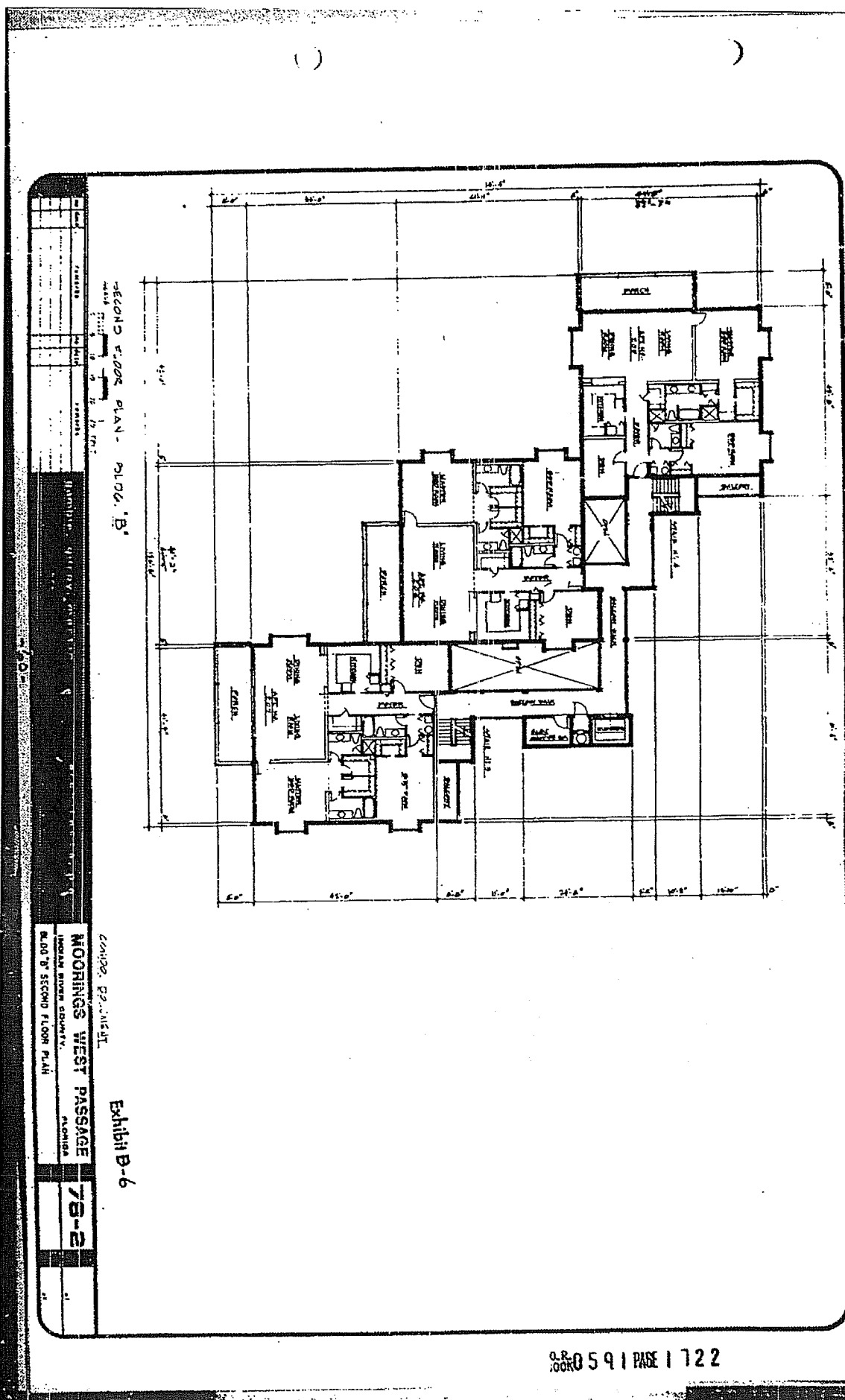


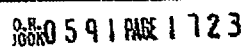


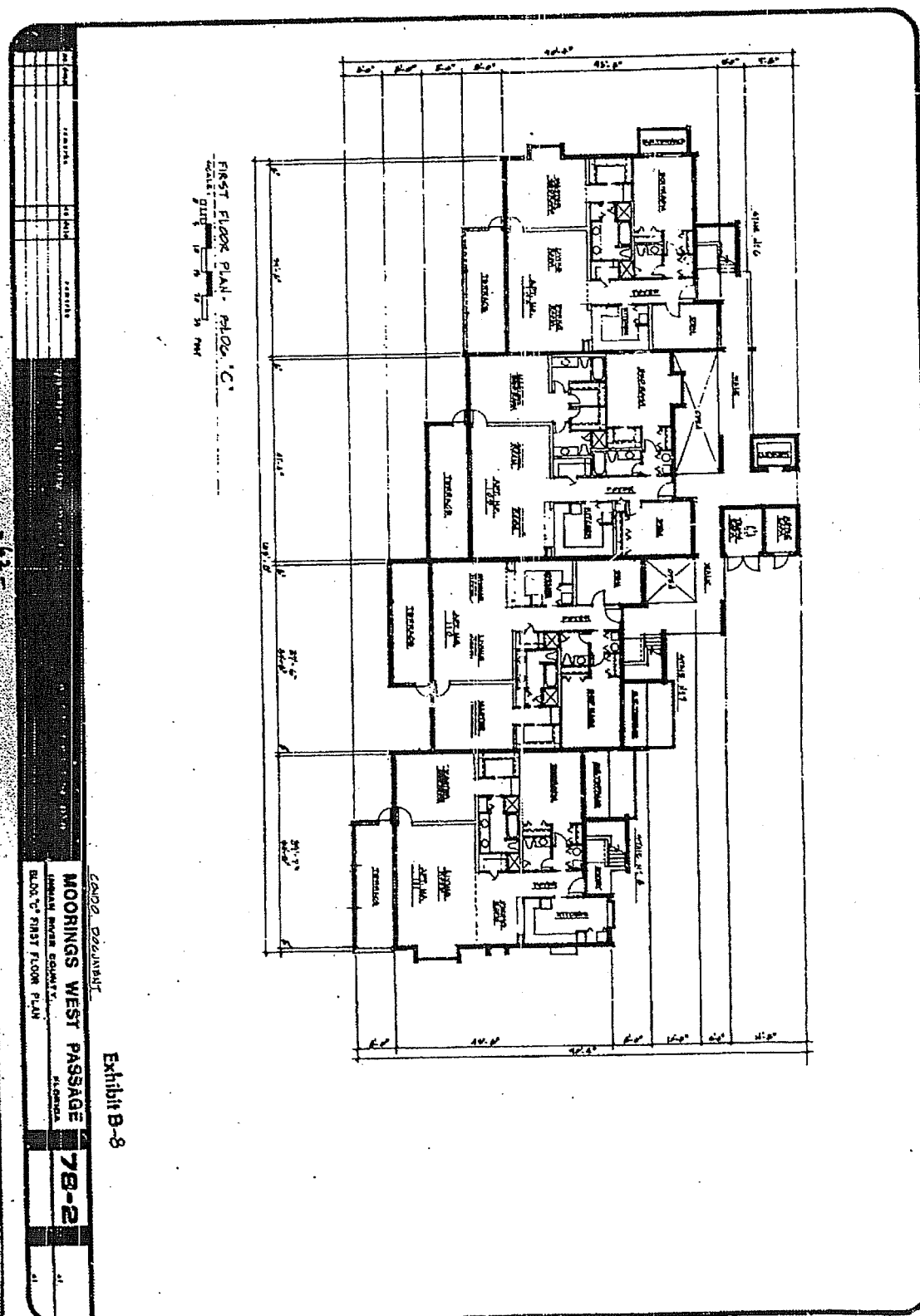




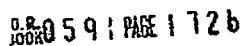




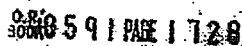


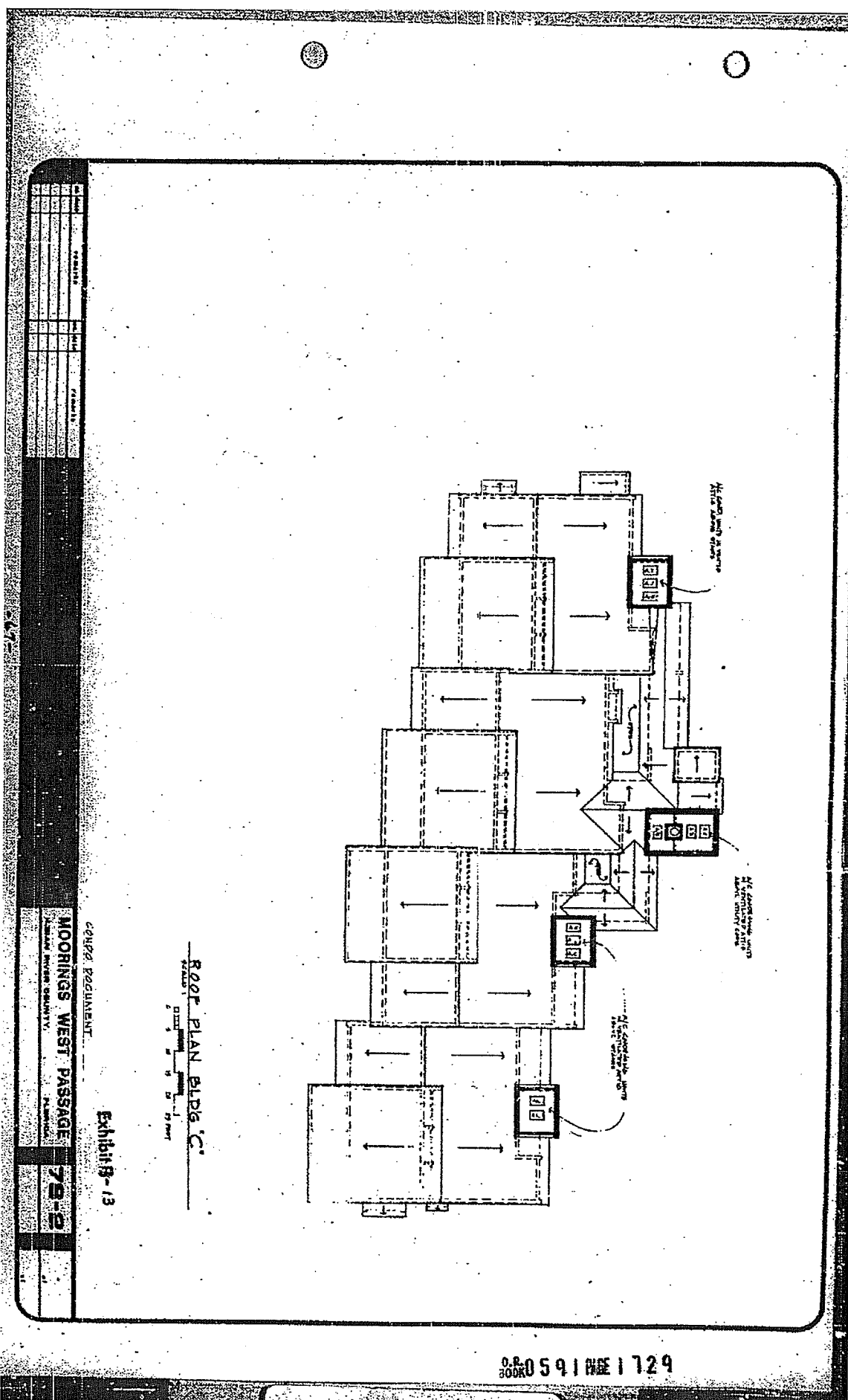




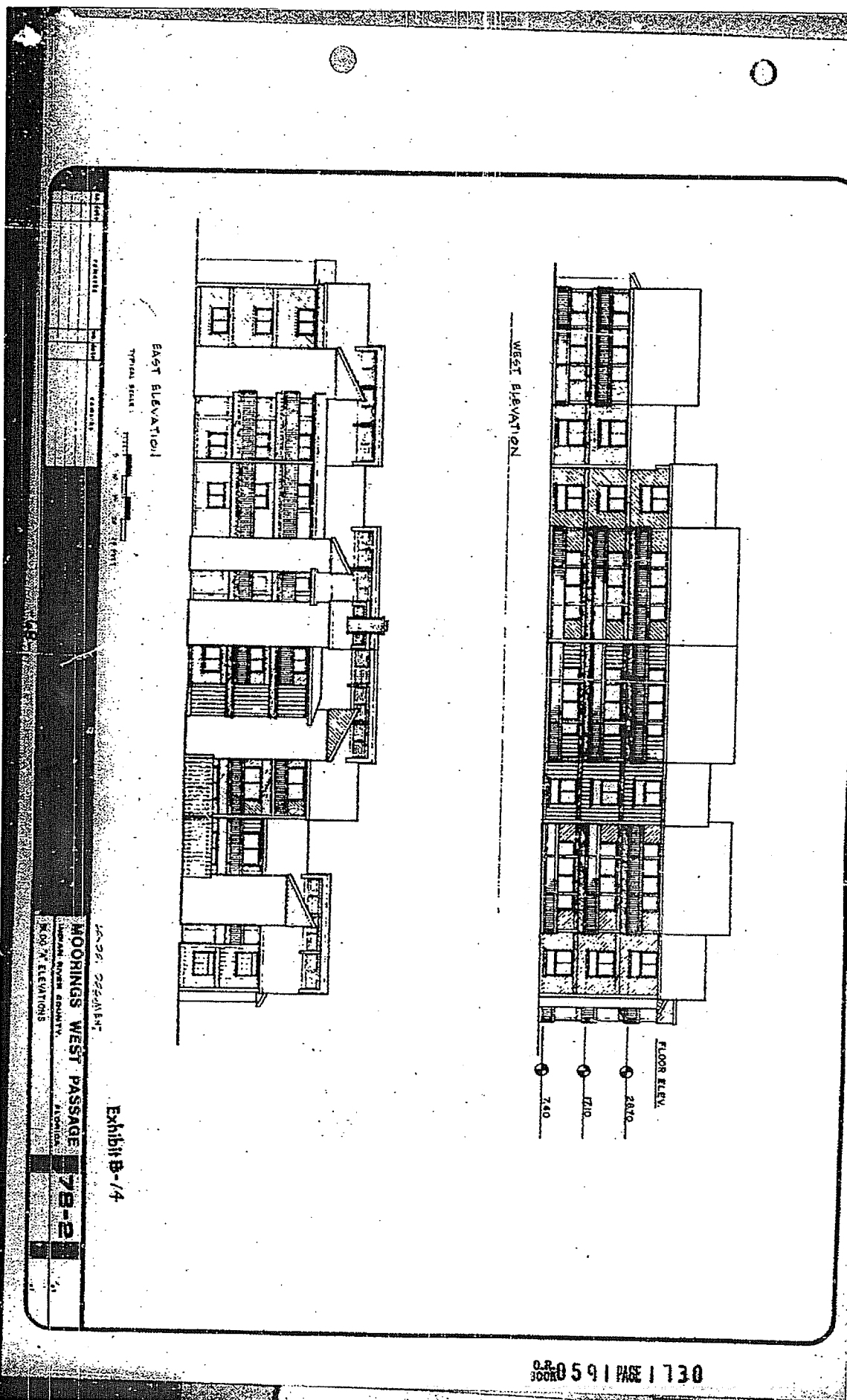


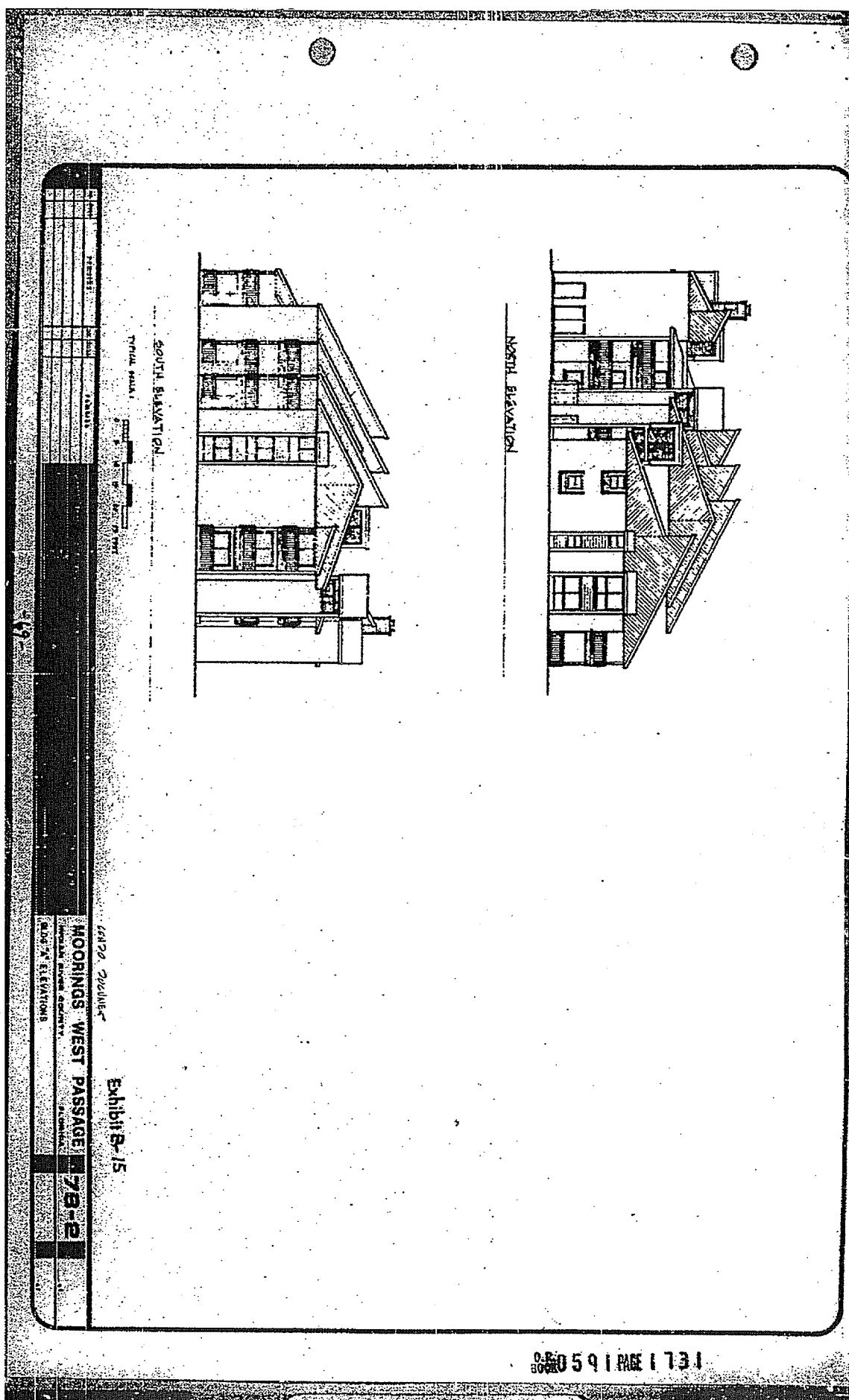


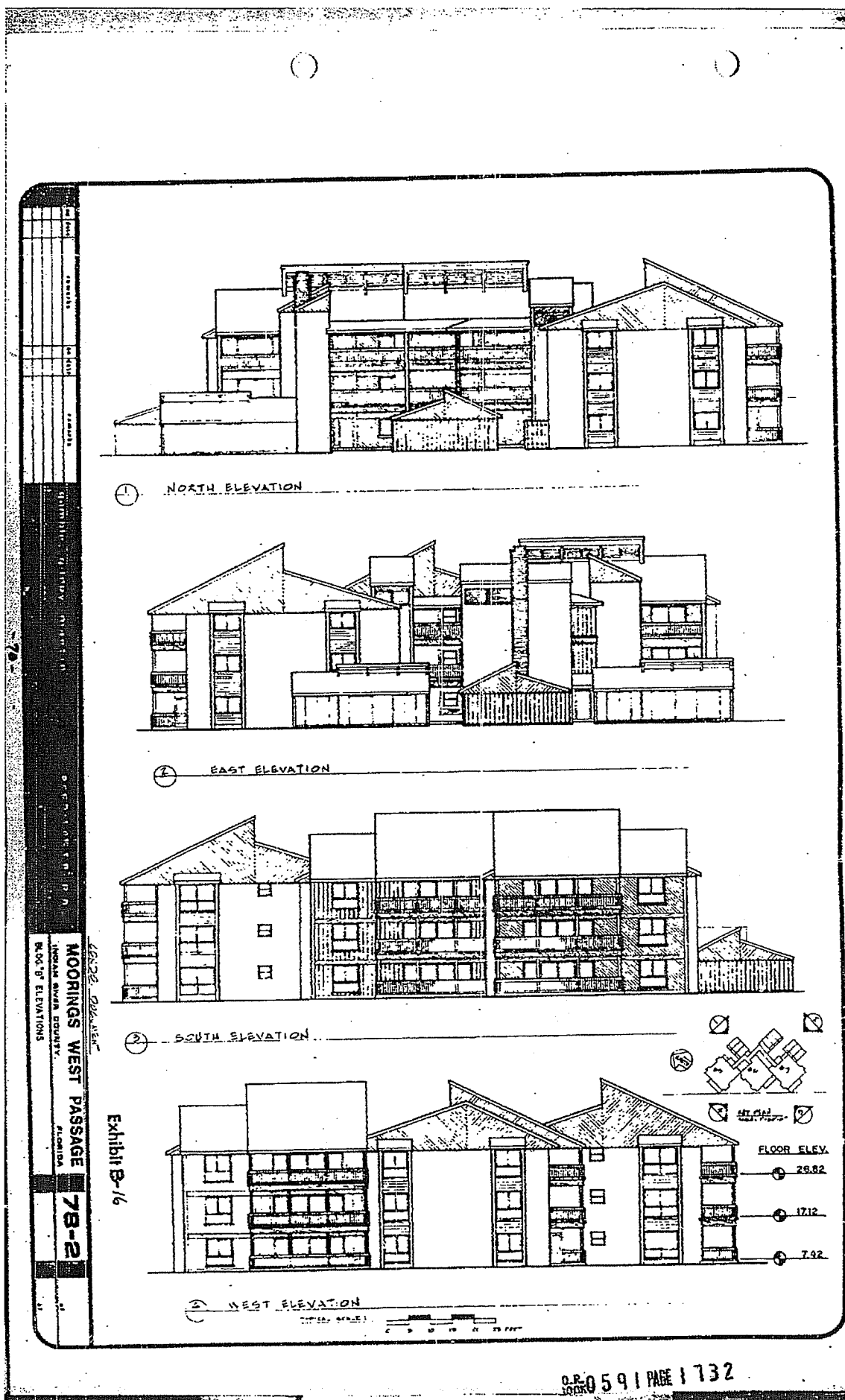


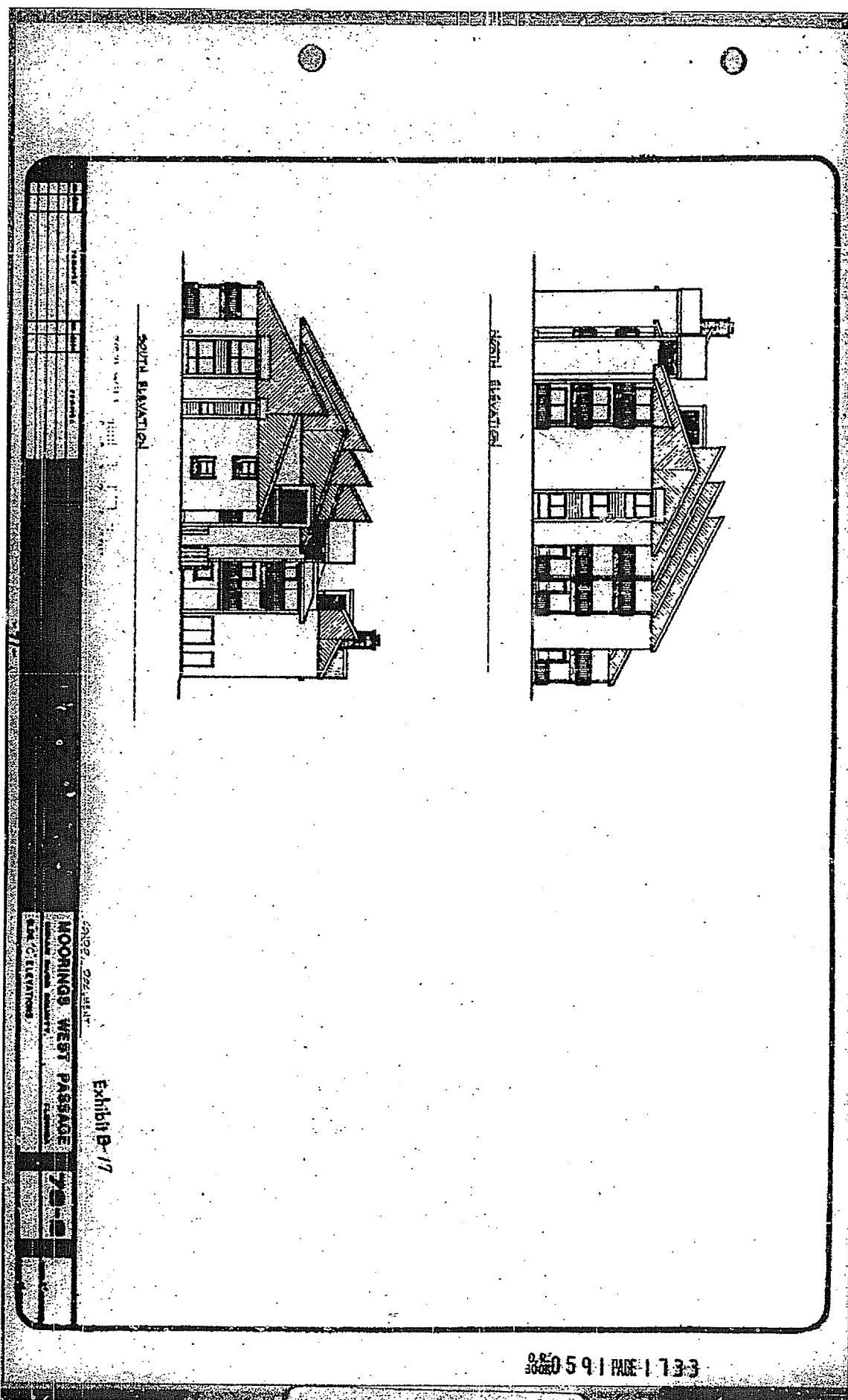














WEST PASSAGE, A CONDOMINIUM (BUILDING A)  
Indian River County, Florida

EXHIBIT C

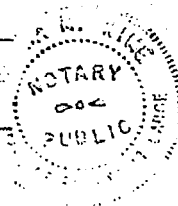
I, James L. Beindorf, Vero Beach, Florida, certify as follows:

1. That I am a land Surveyor, duly authorized to practice in the State of Florida, having Certificate of Registration No. 921, State of Florida.
2. That this Certificate is made as to WEST PASSAGE, a Condominium, Building A, located in Indian River County, Florida, and in compliance with Chapter 718, Florida Statutes.
3. That the construction of the improvements described in the foregoing Declaration of Condominium is sufficiently complete so that with the survey of the land as set forth in Exhibit A attached hereto, together with the plot plans as set forth in Exhibit B attached hereto, showing the apartment buildings and common elements, together with the wording of the foregoing Declaration of Condominium, there can be determined therefrom the identification, location and dimensions of each unit, the common elements and limited common elements, and that the aforementioned material is an accurate representation of the location and dimensions of the improvements.

James L. Beindorf  
Land Surveyor, Certificate of  
Registration No. 921  
State of Florida.

Sworn to and subscribed before me,  
this 24th day of September,  
1979.

Mervin M. Heine  
Notary Public, State of Florida at  
Large. My Commission expires:  
April 21, 1982



# State of Florida

DEPARTMENT OF STATE • DIVISION OF CORPORATIONS

I certify that the following is a true and correct copy of  
Articles of Incorporation of WEST PASSAGE  
ASSOCIATION, INC., a corporation not for profit  
organized under the Laws of the State of Florida, filed  
on February 23, 1978, as shown by the records of this  
office.

The charter number for this corporation is 741781.

GIVEN under my hand and the Great  
Seal of the State of Florida, at  
Tallahassee, the Capital, this the  
24th day of February, 1978.



*James A. Smathers*  
SECRETARY OF STATE

CER 1018-15-77