

ARTICLED

✓ THIS INSTRUMENT PREPARED BY:
JAMES M. WEBER
OF BEGGS, LANE, DANIEL, GAINES & DAVIS
700 BRENT ANNEX PENSACOLA, FLORIDA

STATE OF FLORIDA
COUNTY OF ESCAMBIA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 7th day of June, 1974, by Seamarge, Inc., a Florida corporation, hereinafter referred to as Developer,

WITNESSETH:

WHEREAS, the Developer is the owner of the following described property in Escambia County, Florida:

A portion of Lots 7 and 8 of the William Fisher Subdivision of 96 acres of the Pedro Palao Grant, known as Section 49, Township 2 South, Range 30 West, Escambia County, Florida, as per map recorded in Deed Book 11, at Page 349 of the public records of Escambia County, Florida, more particularly described as follows, to-wit: Beginning at the Northeast corner of Seamarge Subdivision according to plat filed in Plat Book 6, at Page 54 of the public records of said County; thence North 60 degrees 45 minutes 30 seconds East along the South line of St. Louis & San Francisco Railway a distance of 39.0 feet to the intersection of the West line of said Lot 8; thence continue North 60 degrees 45 minutes 30 seconds East along said right-of-way 65.0 feet to a concrete monument; thence South 48 degrees 31 minutes 30 seconds East, 437.8 feet to a concrete monument; thence continue South 48 degrees 31 minutes 30 seconds East, 45 feet more or less to the waters of Pensacola Bay; thence Southwesterly with said waters 99 feet, more or less, to the intersection of the East line of Seamarge Subdivision; thence North 48 degrees 28 minutes West along said East line 35 feet, more or less, to a concrete monument; thence continue North 38 degrees 28 minutes West along said East line 472.05 feet to the point of beginning;

AND ALSO, the East 32 feet of the South Half of Lot 15, Seamarge, a subdivision of a portion of said Pedro Palao Grant (shown on said plat to be a subdivision of a portion of Section 59, Township 2 South, Range 30 West), in Escambia County, Florida, according to plat of said subdivision filed in Plat Book 6, at Page 54 of the public records of Escambia County, Florida; and

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WHEREAS, the Developer as the Owner of the above described real property desires to create thereon a residential community of townhouses; and

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and to this end desires to subject the real property described above to the covenants, restrictions, easements, charters and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, for the creation of an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer has caused to be incorporated under the laws of the State of Florida, a non-profit corporation, Bay Colony Homeowners Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer hereby declares that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

Section 1. "Association" shall mean and refer to Bay Colony Homeowners Association, Inc., a non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Living Unit which is a part of the property described above, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation (if a contract seller has entered into a long-term purchase contract with a contract purchaser, then the contract purchaser shall be considered the Owner) and, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 3. "Properties" shall mean and refer to all such existing properties as are subject to this Declaration as described above.

Section 4. "Lot" shall mean and refer to that portion of the Properties on which a Townhouse has been constructed by the Developer and which is intended to be conveyed by the Developer to an Owner.

Section 5. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1 hereof.

Section 6. "Townhouse" shall mean and refer to any portion of a building situated upon the Properties which is designated and intended for use and occupancy as a residence by a single family.

Section 7. "Living Unit" shall mean and refer to a Lot and the Townhouse constructed thereon.

Section 8. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Living Unit is described as follows:

Beginning at the NE corner of Lot 13, Seamarge Subdivision as recorded in Plat Book 6, Page 54, Official Records of Escambia County, Florida; thence N-60°00'-E along the Southernmost R/W line of the St. Louis and San Francisco Railroad 18.84 feet; thence S-50°00'-E 367.10 feet; thence N-40°00'-E 80.03 feet; thence S-50°00'-E 25.00 feet; thence S-40°00'-W 87.98 feet; thence S-50°00'-E 83.63 feet; thence N-54°08'03"-E 90.73 feet; thence S-50°00'-E 18 feet, plus or minus, to the water's edge of Pensacola Bay; thence Southwesterly along said shoreline 100.78 feet, plus or minus, to the intersection of the extension of the Northernmost

*and north
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line of above mentioned Seamarge Subdivision; thence N-50°00'-W along said line of Seamarge Subdivision 36 feet, plus or minus, to a concrete monument; thence continue along same line 202 feet; thence S-40°00'-W 32 feet; thence N-50°00'-W 50 feet; thence N-40°00'-E 32 feet; thence N-50°00'-W 228.70 feet to the Point of Beginning.

ARTICLE II - PROPERTY RIGHTS

Section 1. Owners' Easements of Ingress and Egress. A portion of the Common Area as hereinafter described, consists of a paved private road giving access to the "Living Units" from Bayshore Drive; parking areas; and a walkway and stairs approximately 83.63 feet in length and approximately 10 feet in width leading to the beach area. That portion of the common area consisting of said paved private road, parking areas and walkway and stairs is more particularly described as follows:

Beginning at the Northeast corner of Lot 13, Seamarge Subdivision as recorded in Plat Book 6, Page 54, Official Records of Escambia County, Florida; thence North 60°00' East along the Southernmost Right of way line of the St. Louis and San Francisco Railroad 18.84 feet; thence South 50°00' East 367.10 feet; thence North 40°00' East 30.03 feet; thence South 50°00' East 25 feet; thence South 40°00' West 87.98 feet; thence South 50°00' East 83.63 feet; thence South 54°08'03" West 10.05 feet; thence North 50°00' West along the extension of the Northernmost line of Seamarge Subdivision 202 feet; thence South 40°00' West 32 feet; thence North 50°00' West 50 feet; thence North 40°00' East 32 feet; thence North 50°00' West 228.70 feet to the Point of Beginning.

Every present and future owner of any Living Unit, their respective heirs, personal representatives, successors and assigns and their invitees and guests, shall and do hereby have a non-exclusive private but perpetual easement for ingress and egress with and without motor vehicles on, over and along that portion of the above-described Common Area which is presently a paved private road and parking area and shall and do hereby have the right to freely use said paved private road as such and to park motor vehicles in the parking areas without obstructing the movement of motor vehicles thereon. In construing the rights of the parties under this paragraph, it shall be considered that said paved private road and parking area was constructed for the joint use of the Owners of said Properties, their invitees and guests. Every present and future Owner of any Living Unit, their respective heirs, personal representatives, successors and assigns and their invitees and guests, shall and do hereby have a non-exclusive private but perpetual easement on, over and along that portion of the Common Area presently consisting of a walkway and stairs extending to that portion of the Common Area located on Pensacola Bay.

Every deed executed by the Developer conveying a Living Unit to an Owner shall also include an easement for ingress and egress, as described above, on, over and along that portion of the Common Area now used as a private driveway, parking area and walkway.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to all of the Common Area which shall be appurtenant to and shall pass with the title to every Living Unit, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Living Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by three-fifths of each class of members agreeing to such dedication or transfer has been recorded.

Section 3. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person, group of persons or other legal entity who is an Owner of any Living Unit shall be a member of the Association; providing, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member. Membership shall be pertinent to and may not be separated from ownership of any Living Unit.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. The Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. The Class A members shall be entitled to one vote for each Living Unit in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Living Unit all such persons shall be members, and the vote for such Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Living Unit.

Class B. The Class B member shall be the Developer. The Class B member shall be entitled to three votes for each Living Unit in which it holds the interest required for membership by Section 1, provided that Class B membership shall cease and become converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) On the 7th day of June, 1975.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Living Unit in which it holds the interest required for membership under Section 1.

The Developer shall not exercise its voting rights granted to it under this Article in an unreasonable manner nor in such a way as to cause undue hardship upon any Owner.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessment: The Developer, for each Living Unit owned within the Properties, hereby covenants to pay to the Association, and each Owner of any Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges, and (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together

any event, be at least equal to a sum that will cover the actual cost to the Association ~~for development~~ for performing the maintenance called for herein, and for paying any ad valorem real property taxes assessed against the Common Area.

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Notwithstanding anything set forth in this Declaration to the contrary, the Association assumes the obligation to provide the maintenance stated above only to the extent such maintenance can be provided with the proceeds of the monthly assessments called for herein, after payment of any ad valorem real property taxes assessed against the Common Area.

The Association may fix the monthly maintenance assessment at an amount less than \$40.00 if such assessment is adequate for the purposes set forth above.

All assessments received by the Association shall be held in escrow and shall only be used for the purposes set forth herein.

Section 4. Special Assessment for Capital Improvement. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, after June 7, 1975, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for any major maintenance project such as the replacement of roofs, repairing or repaving access driveways, or other capital improvements to the exterior of the Properties provided that any such assessment shall have the assent of four-fifths (4/5) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. *4/1*

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. *60% to 60%*

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Living Units and may be collected on a monthly basis.

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Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Living Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Living Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Living Unit have been paid. *✓*

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose

the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Living Unit.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Living Unit shall not affect the assessment lien. However, the sale or transfer of any Living Unit pursuant to mortgage foreclosure or any proceeding or deed in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

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ARTICLE V - ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI - DUTY TO REBUILD OR REPAIR

Section 1. In the event of damage to or destruction of any Townhouse on the Properties by fire, windstorm, water, or any other cause whatsoever, the Owner shall, within a reasonable time, cause said Townhouse to be repaired or rebuilt so as to place the same in as good and tenable condition as it was before the event causing such damage or destruction, and failure to do so shall constitute a breach of these Covenants. Subject to priority in favor of any mortgagee under a mortgage clause, all insurance proceeds for loss or damage to any Townhouse or any other improvement upon any Lot shall be used to assure the repair or rebuilding of such Townhouse or any part thereof.

Section 2. The Association created hereunder shall have a lien on all such insurance proceeds, regardless of whether it is named as having such in the insurance policy, subordinate only to the claim of any mortgagee under a mortgage clause, to enforce the intent of the foregoing provision.

ARTICLE VII - PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhouses upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner

who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII - RESTRICTIONS AS TO USE, OCCUPANCY AND APPEARANCE

Section 1. General. All of the Living Units on the Properties shall be used and occupied as single family dwellings. No dwelling unit, building, fence, or other structure, except as placed on each Lot by the Developer, shall be erected or placed on any such Lot. No alterations in the exterior (appearance) of any Living Unit, Townhouse, Lot, building, fence, or other structure shall be made and no alterations shall be made to any landscaping placed upon any Lot by the Developer without the written permission of the Association created hereunder.

Section 2. Temporary Structure. No structure of a temporary nature (trailer, shack, tent or outbuilding) shall be moved to, placed upon or used on any Lot at any time, either temporarily or permanently, excepting, however, that during periods of construction, contractors may be permitted a single storage shed on each separate construction site.

Section 3. Building Condition, General Appearance, Nuisance, and Health Regulations. All premises shall be maintained in good repair, clean and sanitary at all times, no nuisance and no violation of the rules and regulations of the State Board of Health or any governmental agency shall be permitted.

Section 4. Noxious and Offensive Trade. No noxious or offensive trade or activity shall be carried out upon the Properties nor shall anything be done thereon which may or may become an annoyance to the other Owners.

Section 5. No commercial signs, including "for rent", "for sale", and other similar signs, shall be erected or maintained on any Lot or building except with the written permission of the Association or except as may be required by legal proceedings, it being understood that the Association will not grant permission for said signs unless their erection is reasonably necessary to avert serious hardship to the Living Unit Owner. If such permission is granted, the Association reserves the right to restrict size, color and content of such signs.

Section 6. No outside clothes line or other items detrimental to the appearance of the Properties shall be permitted on any Lot. All garbage receptacles must be kept within individual Living Unit or Townhouse service areas.

Section 7. Animals. No livestock, animals, chickens or fowl of any kind shall be permitted except dogs, cats, and birds owned as personal pets. Dogs, cats and birds shall not be kept in such numbers as to be an annoyance to the other Owners in the area.

Section 8. No building, Lot or Living Unit shall at any time be used for the purpose of any trade, business, manufacture or public amusement.

Section 9. No individual water system or wells shall be allowed on any Lot.

Section 10. Trailers, Trucks, Commercial Vehicles. No trailer, mobile home, camper, motorbike, motorcycle, motor scooter, boat, boat trailer, house trailer, truck, tractor, or commercial vehicle of any kind, (or any other vehicle), machine, equipment or apparatus other than an operating passenger automobile, shall be parked on any street or in any driveway or yard on the Properties, except for commercial vehicles and machines and equipment required to perform construction or repair services to a Townhouse for the period of time necessary for said construction or repair.

Section 11. Waiver. Should any of these covenants impose a particularly unfair, unjust or substantial hardship on any Owner, builder, lessor or renter, they may petition the Association in writing to seek a modification or waiver of the covenant requirements. At any time three-fifths of the Owners of the Living Units under the jurisdiction of the Association may by written instrument duly recorded in the public records of Escambia County, Florida, modify or waive the requirements contained in these Restrictions. These Covenants and Restrictions are to run with the land and shall be a part of all deeds and contracts of conveyance for any and all Living Units and shall be binding on all parties and persons claiming under them as set forth in Article IX, Section 1 hereof.

Section 12. Enforcement. If the Owner or occupant of any Living Unit shall violate or attempt to violate any of these Covenants and Restrictions while in force and effect, it shall be lawful for the Developer, the Association, or any person or persons owning any other Living Unit to institute proceedings at law or in equity against any person or persons violating or attempting to violate such Covenants or Restrictions either to prevent them from doing so or to recover damages or other dues for such violation.

Section 13. Invalidation. The invalidation of any of these Covenants or Restrictions or portions thereof by judgment or Court order shall in no wise affect the other provisions which shall remain in full force and effect.

ARTICLE IX - GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions contained in each and every Article of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, or the Developer, their respective legal representatives, heirs, successors and assigns until January 1, 2004, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of three-fifths of the Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part, provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. Anything hereinabove contained to the contrary notwithstanding, any provision contained herein may be eliminated, modified, amended, or altered at any time by a written instrument or instruments executed by four-fifths of the Owners of the Living Units and filed among the public records of Escambia County, Florida; provided, that the holder or holders of a majority of the first mortgage liens on the Living Units consent thereto in writing (which consent may be evidenced by joinder in the execution of said written instrument or instruments).

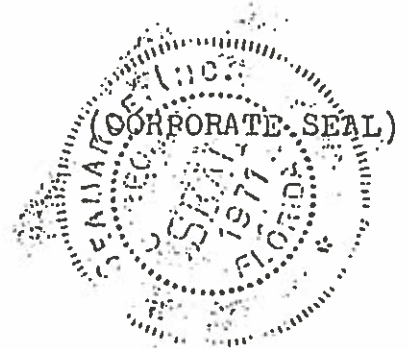
IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officers and its corporate seal to be hereunto affixed this 7th day of June, 1974.

SEAMARGE, INC.

By: James M. Keltner
James M. Keltner
Its President

ATTEST:

Gwendolyn M. Appelquist
Gwendolyn M. Appelquist
Its Secretary



STATE OF FLORIDA
COUNTY OF ESCAMBIA

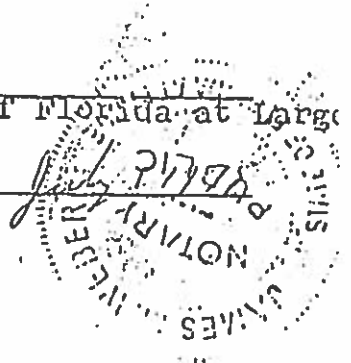
Before me, a Notary Public in and for the State and County shown above, personally appeared James M. Keltner and Gwendolyn M. Appelquist, known to me and known to me to be the President and Secretary of

Seamarge, Inc., a corporation organized and existing under the laws of the State of Florida, and they acknowledged before me, being first duly sworn, that they executed the foregoing instrument for the uses and purposes therein expressed.

Given under my hand and official seal this 7th day of June, 1974.

Samuel M. Weber
Notary Public, State of Florida at Large

My Commission Expires: July 21, 1978



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FILED & RECORDED IN
THE PUBLIC RECORDS OF
ESCAMBIA CO. FLA. ON

JUN 14 4 39 PM '74

IN BOOK & PAGE NOTED ABOVE
JOE A. FLOWERS, COMPTROLLER
ESCAMBIA COUNTY