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MOD RSTR

SECOND AMENDMENT TO DECLARATION
OF HORIZONTAL PROPERTY REGIME AND
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR TOWN AND COUNTRY BILTMORE TOWNHOMES

Reference is hereby made to that certain Declaration of Horizontal Property Regime and Declaration of Covenants, Conditions and Restrictions for Town and Country Biltmore Townhomes executed and recorded on January 4, 1980, at Docket 14138, page 831 et seq., records of Maricopa County, Arizona, as amended by a First Amendment thereto executed on January 11, 1980, and recorded on January 15, 1980, at Docket 14159, page 908 et seq. of such records (such Declaration as amended being herein called the "Declaration").

Town & Country Condominiums, Inc., an Arizona corporation, being the Declarant under said Declaration, pursuant to paragraph 25 thereof, hereby further amends such Declaration in the following respects:

1. Paragraph 1.5 is hereby amended by adding the following at the end of such paragraph:

"Without limiting the foregoing, the term 'Declarant' shall include Abacus Mortgage Investment Company ("Abacus") and its successors and assigns should Abacus succeed to the interest of Town Country Condominiums, Inc. (or its successors and assigns) as a result of the exercise of any remedy provided in its Deed of Trust or other agreement between said Town & Country Condominiums, Inc. and Abacus."



STATE OF ARIZONA } ss
County of Maricopa }
I hereby certify that the within instrument was filed and recorded at request of
USLIFE TITLE COMPANY OF ARIZONA
SEP 4 - 1980 - 3 15
in Doc. # 14663
on page 428 - 442
Witness my hand and official seal the 4th day of August, 1980.
Bali Blaney
County Recorder
By C. Michael
Deputy Recorder
J.M.

2. Subparagraph (i) and (ii) of subparagraph (b) of paragraph 4.1, under the heading "Class B", are hereby amended in their entirety to read as follows:

"(i) Within ninety (90) days after the Subleasehold estates to eighty percent (80%) of the Units shall have been transferred to Persons other than the Declarant; or

(ii) On January 1, 1983; or"

3. Paragraph 4.3 is hereby deleted in its entirety and paragraphs 4.4 and 4.5 are hereby renumbered as paragraphs 4.3 and 4.4, respectively.

4. Paragraph 5 of the Declaration is hereby amended in its entirety to read as follows:

"5. Common Elements.

5.1 General Common Elements. Except as hereinafter provided with respect to the limited Common Elements, each Owner shall have the non-exclusive right to use the Common Elements in common with all other Owners as may be required for the purposes of access and ingress and egress to and from and the use, occupancy and enjoyment of the respective Unit held by such Owner and of the Common Elements for their intended purposes, as herein provided. Such right shall be subject to such reasonable limitations and restrictions as may from time to time be promulgated by the Board, and shall be subject to and governed by the provisions of this Declaration, the Articles and the Bylaws, the Lease and the Sublease. The Board shall have authority by means of reasonable rules and regulations to allocate any parking spaces which are not limited Common Elements, as hereinafter

provided, among the Units on an equitable basis and to restrict the use thereof for the benefit of the Units to which such parking spaces are allocated. Notwithstanding any other provision hereof to the contrary, except for the interior of any Unit which has been transferred by Declarant and except as may be necessary for reasonable access and egress to and from any such transferred Unit, Declarant shall be entitled to exclusive access to and occupancy of all or any portion of any Building or other Common Element or parking areas until such time as the remodeling thereof is complete and Declarant shall have certified the readiness of such Building, Common Element or portion thereof or parking area to the Board of Directors, or until January 1, 1982, whichever shall first occur.

5.2 Limited Common Elements. Attached hereto as Exhibit H is a two-page Plat showing the location of parking spaces upon the Premises. Those numbered parking spaces which are designated for particular Units on the cross reference table on said Exhibit H shall be limited Common Elements, as that term is defined in Arizona Revised Statutes, Section 33-551.7, and are hereby set aside for the exclusive use and benefit of the Owner of the Unit for which they are designated on such cross reference table. The Owner for whom each such parking space is set aside shall be entitled to reasonable access thereto and to the use thereof for parking purposes, subject to such rules and regulations as may be adopted by the Board of Directors from time to time. No such parking space shall be used by any

Person who is not then the occupant of the Unit for which it is set aside. Any attempt to permit the use of any such parking space contrary to the terms hereof is prohibited. The Association may exclude from any such parking space any person who is not entitled to the use thereof. All other parking spaces shall be general Common Elements, as hereinabove provided."

5. Paragraph 6 of the Declaration is hereby amended in the following respects:

A. The words, "other than the Declarant," are hereby deleted from the first sentence of paragraph 6.

B. The period at the end of the first sentence of paragraph 6 is hereby changed to a comma, and the following is hereby added:

"and including an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis."

C. The following sentences are hereby inserted following the end of the first sentence of paragraph 6:

"In the case of Units the Subleasehold estates to which have been transferred to Persons other than the Declarant, including without limitation, through foreclosure, to any Mortgagee, liability for assessments shall commence upon the initial transfer of the Subleasehold estate of each such Unit. In the case of Units the Subleasehold estate to which are held by the Declarant, liability for assessments will commence on the earlier to occur of the following: (i) the first occupancy of any Unit by any Person other than the Declarant; or (ii) within sixty (60) days after the first transfer

of the Subleasehold estate of any Unit to a Person other than the Declarant, including without limitation, through foreclosure, to any Mortgagee."

D. The following sentence is hereby added at the end of the first paragraph of paragraph 6:

"The Board of Directors shall make an annual budget and shall attempt, to the extent reasonably practicable, to assess Common Expenses on an even, periodic basis, rather than by special assessments."

E. The first sentence of the second paragraph of paragraph 6 is hereby amended by changing the period at the end of such sentence to a semi-colon and adding the following:

"; provided, however, that neither this Declaration nor any action, rule or regulation of the Association shall be effective to change the terms and provisions for the payment of Rental under any Sublease, the Master Sublease or the Lease."

F. The fourth sentence of the second paragraph of paragraph 6 is hereby amended by changing the semi-colon to a period after the word "therefrom", deleting the words "provided, however, that" and starting the next sentence with the word "Such", which sentence shall be and read in its entirety as follows:

"Such lien shall be subordinate to the rights of any subsequent bona fide purchaser of the Unit and to the lien under a prior recorded First Mortgage on the applicable Unit acquired in good faith and for value, except, in either case, for the amount of unpaid Rental and Common Expenses which accrues from and after the date on which such Person or First Mortgagee acquires the Sub-

leasehold estate to or comes into possession of the applicable Unit."

Following this sentence, the words ", and" are deleted and the next sentence shall begin with the word "If".

G. The last paragraph of paragraph 6 is hereby deleted in its entirety.

6. The third sentence of paragraph 9.5 is hereby amended in its entirety to read as follows:

"All insurance proceeds or funds received by the Association shall be applied in accordance with the following priorities: first, as expressly provided elsewhere in this Declaration; second, to the Owners, their Mortgagees or other Persons whom the Association may determine are legally or equitably entitled thereto; and third, the balance, if any, to Owners and their Mortgagees, as their interests may appear, in proportion to their respective interests in the Common Elements."

7. Paragraph 9.6 of the Declaration is hereby amended to provide that the amount of fidelity bonding required thereby shall be "up to fifty percent (50%)" of the Association's estimated annual budget.

8. The Declaration is hereby amended by renumbering original paragraph 9.7 as paragraph 9.8 and inserting immediately prior to such renumbered paragraph 9.8 the following paragraph 9.7:

"9.7 FHLMC Requirements. If at any time any of the Units are covered by mortgages or deeds of trust which are required in writing by the holder thereof to qualify for further sale thereof to the Federal Home Loan Mortgage Corporation ("FHLMC") (or any successor to such corporation

which performs its present functions), the Association shall at all times carry, in addition to any other insurance required to be maintained hereunder, all insurance in such amounts and containing all such provisions as are required from time to time by the FHLMC to be maintained by the homeowners' associations of qualifying condominium developments, unless such coverage is unavailable or waived by the FHLMC in writing. The Association shall furnish to the FHLMC or to any First Mortgagee requesting the same in writing any claim or notification of damage or other loss covered by any insurance required by the FHLMC to be maintained by the homeowners' associations of qualifying condominium developments."

9. Paragraphs 10.2 and 10.3 of the Declaration are hereby amended in their entirety to read as follows:

"10.2 Restoration of the Common Elements.

Restoration of the Common Elements shall be undertaken by the Association without a vote of the Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence. In the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, such restoration shall be undertaken unless the prior written consent of Owners and First Mortgagees to such non-restoration, and, if there are any proceeds or awards, to the use of such proceeds or awards for a purpose other than the restoration of the Common Elements, is obtained as follows:

A. If Declarant then owns any Units, such consent shall be obtained from the Declarant and not less than two-thirds of

the Owners of all Units not owned by
Declarant; and

B. If Declarant then owns no Units,
such consent shall be obtained from not
less than two-thirds of the Owners of all
Units.

For purposes of both of subparagraphs A and B, before
the written consent of the Owner of any Unit which
is subject to a Mortgage shall be effective, the
First Mortgagee of such Unit shall also have consented
in writing to such non-restoration and to the use
of any such proceeds or awards for a purpose
other than the restoration of such Common
Elements.

10.3 Sale of the Property. In the event
of Substantial Destruction, Substantial Condemna-
tion or Substantial Obsolescence, if the requisite
number of First Mortgages and Owners consent to
non-restoration, as provided in the preceding
paragraph, the Common Elements shall be sold,
except for those portions of the Common Elements
which remain desirable and which are independent
of the destroyed, condemned or obsolete portion.
In the event of such sale, the proceeds of sale
and any insurance proceeds, condemnation awards
or payments in lieu of condemnation shall be dis-
tributed by the Association to the Owners of Units,
with each Unit receiving an equal portion. Such
payments shall be made to Owners or, as to Units
which are Mortgaged of record at the time of such
payment, jointly to such Owner and the Mortgagee."

10. Paragraph 10.5 of the Declaration is hereby
amended in its entirety to read as follows:

"10.5 Special Assessments for Restoration.

Whenever Restoration is undertaken, the Association may levy and collect assessments from the Owners in proportion to such Owners' undivided interests in the Common Elements payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds. Such special assessments shall be secured by a lien on the Unit of each such Owner as in the case of regular assessments. Notwithstanding any other provision in this Declaration to the contrary, in the case of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, any such special assessment shall not be a personal obligation of any Owner who voted against Restoration and in favor of the use of any proceeds for another purpose at a meeting, held within thirty (30) days after the date of such event, of the Owners duly called for such purpose or who filed with the Association a written consent to non-restoration and to the use of such proceeds for another purpose. Whether or not such special assessment is a personal obligation of the Owner, if it is not paid when due, such special assessment may be recovered by foreclosure of the lien against the Unit of such Owner, subject in all respects to the rights of Mortgagees of such Units as herein provided."

11. Paragraph 10.6 of the Declaration is hereby amended by inserting the words "and Mortgagees" after the phrase "apportioned to Owners" where it appears in the sixth sentence of such paragraph.

12. Paragraph 19 of the Declaration, including subparagraphs (a) through (h) hereof is hereby deleted in its entirety.

13. Paragraph 24 of the Declaration is hereby amended in the following respects:

A. The first sentence of paragraph 24 is hereby amended by changing the period at the end of such sentence to a comma and adding the following to the end thereof:

"provided, however, that no Owner shall be deprived of the ownership of or the right to occupy and possess his Unit by virtue of the exercise of any power or remedy of the Association, except by foreclosure of any lien of the Association upon the terms and in the manner provided herein or pursuant to the exercise of any remedy provided in the Sublease upon a default thereunder.

B. The last paragraph of Paragraph 24 is hereby amended to read in its entirety as follows:

"No breach of any of the covenants, conditions, restrictions, reservations and servitudes provided for in this Declaration, in the Articles of Incorporation, By-laws or rules and regulations of the Association or in the Lease or the Sublease, which breach occurs prior to the time when a Mortgagee acquires the Subleasehold estate to or comes into possession of its Mortgaged Unit, nor the foreclosure of any lien, the exercise of any right of re-entry or the exercise of any other remedy by the Association or any Owner on account of any such breach shall

defeat or adversely affect the lien of any Mortgage made in good faith and for value upon any Unit and its appurtenant undivided interest in the Common Elements, but, except as may be herein expressly provided, each and all of such covenants, conditions, restrictions, reservations and servitudes and such liens, rights and remedies shall be binding upon and effective against any Mortgagee after it acquires or comes into possession of such Subleasehold estate and against any Sublessee or Owner of any Unit whose estate or interest therein or title thereto is acquired by foreclosure, Trustee's sale, sale, deed in lieu of foreclosure or otherwise, whether or not such Mortgage attaches to the fee interest in the Parcel or any part thereof."

14. Paragraph 25 of the Declaration is hereby amended by adding the following proviso after the conclusion of the first proviso in the third paragraph thereof:

"and provided further that Declarant shall have the right to amend the description of the existing Common Elements only until the first Unit has been sold and the transfer thereof has closed;"

15. Paragraph 29 is hereby amended by inserting in the first sentence thereof after the phrase "or having the contractual right to do so," the words "including any Mortgagee,".

16. Paragraph 32 of the Declaration is hereby amended in the following respects:

A. Subparagraph a. thereof is hereby amended in its entirety to read as follows:

"a. Change the pro rata interest or obligations of any Unit for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds, condemnation awards, other proceeds to be distributed among the Owners or Mortgagees or (ii) determining the pro rata interest in the Common Elements appurtenant to each Unit;"

B. Subparagraph c. thereof is hereby amended by deleting the word "or" at the end thereof.

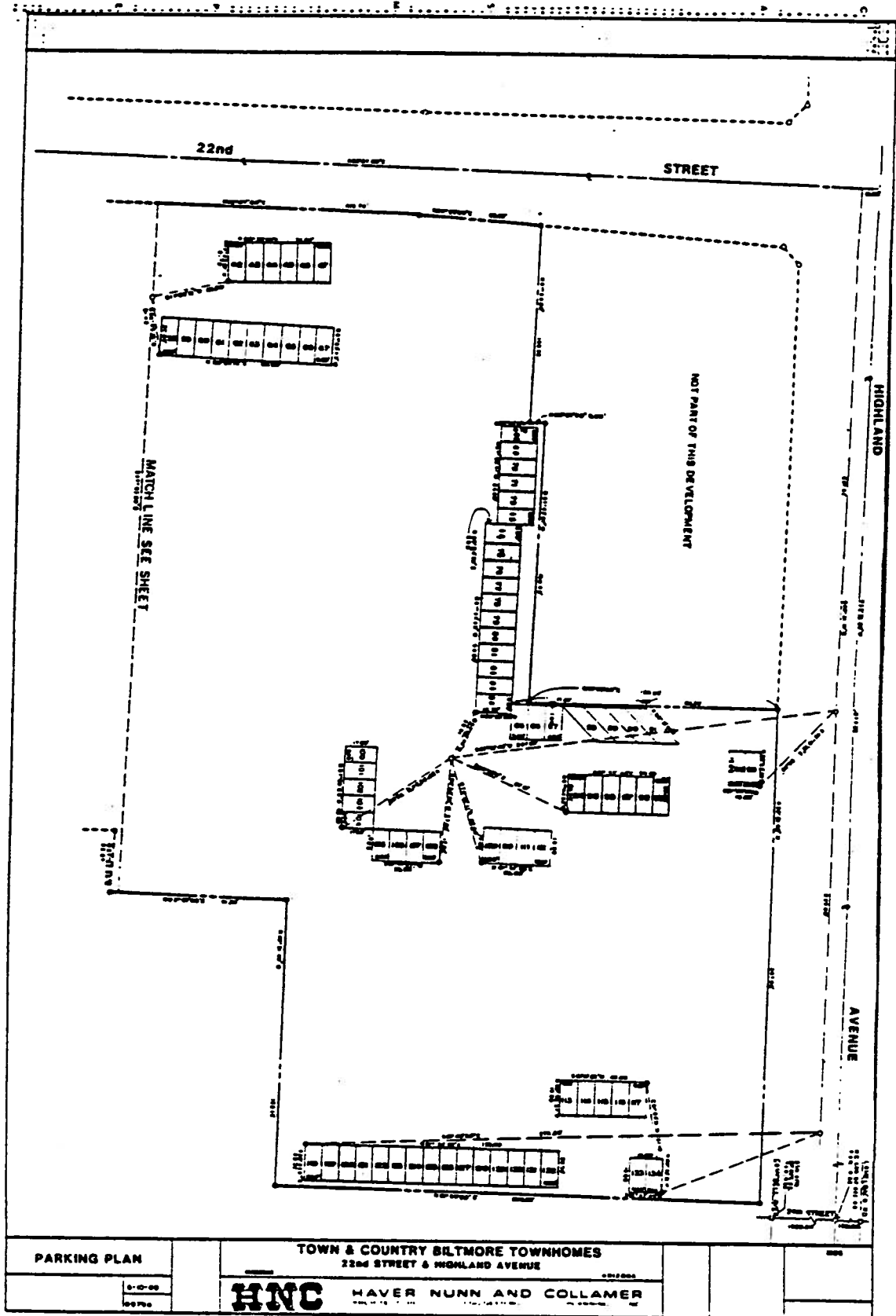
C. Subparagraph d. thereof is hereby amended by changing the period at the end thereof to a semicolon and adding the following subparagraphs e. and f. immediately following said subparagraph d.:

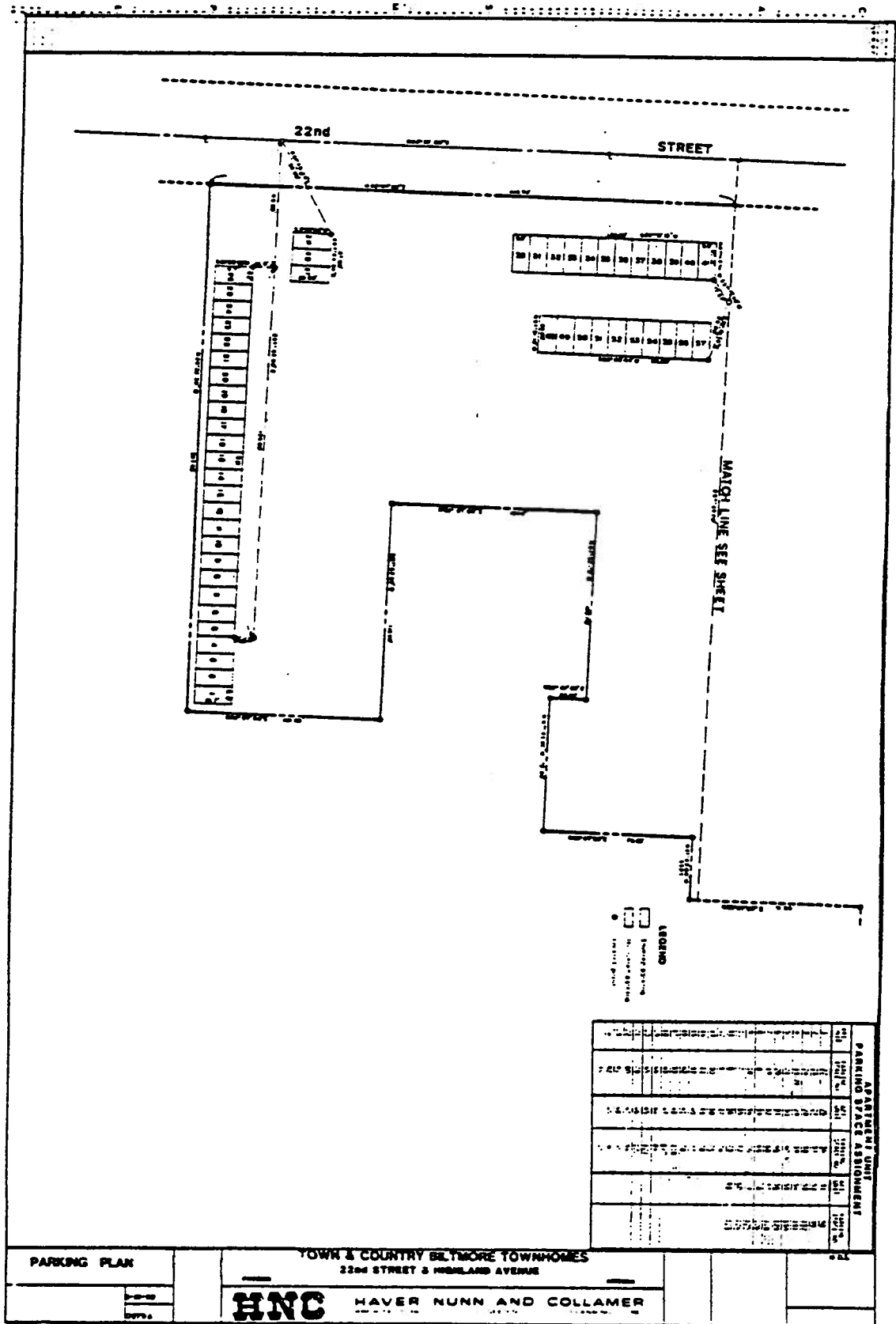
"c. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements not being a transfer within the meaning of this clause); or

"f. Use hazard insurance proceeds for losses to any Property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of such Property."

D. The following paragraph is hereby added at the end of paragraph 32:

"Any one or more First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies covering any such Common Elements which are required





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