

CONDOMINIUM DECLARATION
FOR
LEEWARD COVE
A CONDOMINIUM PROJECT

CONDOMINIUM RECORDS
NUECES COUNTY, TEXAS
VOL 22 PAGE 690

THE STATE OF TEXAS :
COUNTY OF NUECES : KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS TRI-STAR VENTURES, INC., a Texas corporation, hereinafter called "Declarant", is the Owner of certain real property situated in the County of Nueces, State of Texas, being described more fully on Exhibit "A", which by this reference is made a part hereof; and

WHEREAS, Declarant desires to establish a Condominium Regime under the Condominium Act of the State of Texas, Section 81 of the Texas Property Code Annotated (Vernon 1984), herein called the "Act"; and

WHEREAS, Declarant has prepared plans for the construction of two (2) multifamily Buildings and other improvements appurtenant thereto on the Property described in Exhibit "A", which when completed shall consist of sixteen (16) separately designated Condominium Units and which will be known as Leeward Cove, A Condominium Project; and

WHEREAS, Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the area or space contained in each of the Units, herein called the "Condominium Regime", in the Buildings and the co-ownership by the individual and separate Unit Owners thereof, of all the remaining property, which includes both Limited Common Elements and General Common Elements, as hereinafter defined in Paragraph 1.1 hereof, and which are hereinafter collectively referred to as the "Common Elements" or "Common Areas"; and

NOW, THEREFORE, Declarant does hereby submit the real property described on the attached Exhibit "A", and all improvements thereon, to the provisions of the Act and the Condominium Regime, and does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and to any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

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ARTICLE I
DEFINITIONS AND TERMS

1.1 DEFINITION OF TERMS. As used in this agreement, the following terms shall have the following meanings unless the context shall expressly provide otherwise:

a. "Board" or "Board of Directors" shall refer to the Board of Directors of Leeward Cove Owners Association, Inc.

b. "Common Assessment" means the charge against each Unit Owner and his Unit, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Property, which are to be paid uniformly and equally by each Unit Owner of the Association, as provided herein. This shall include charges assessed against each Unit Owner to maintain a reserve for replacement fund and to cover costs incurred by the Association to participate in any condemnation suit, as provided in Paragraph 6.3 hereof.

c. "Common Elements" means and includes all of the Property described in Exhibit "A", and all of the improvements thereto and thereon located, excepting all Units. Common Elements shall consist of the General Common Elements and Limited Common Elements.

d. "Common Expenses" means and includes:

(1) All sums lawfully assessed against the Common Elements by the Managing Agent or Board;

(2) All expenses of administration and management, maintenance, operation, repair or replacement of and addition to the Common Elements (including unpaid special assessments);

(3) Expenses agreed upon as Common Expenses by the Unit Owners; and

(4) Expenses declared to be Common Expenses by this Declaration or by the By-Laws.

e. "Completed Unit" means a completely finished Unit, including, but not limited to, the installation of all appliances and utilities, rendering it ready for occupancy by an Owner other than the Declarant.

f. "Condominium Owners Association" or "Association" means Leeward Cove Owners Association, Inc., a Texas non-profit corporation, the By-Laws of which shall govern the administration of

this Condominium Property and the membership of which shall be composed of all the Owners of the Condominium Units according to such By-Laws.

g. "Condominium Unit" shall mean an individual Unit together with the interest in the Common Elements (General or Limited) appurtenant to such Unit.

h. "Construction Period" means that period of time during which Declarant is developing the Premises and selling the Condominium Units, which time period shall extend from the date hereof until such time as the Declarant transfers title to all of the Condominium Units.

i. "Declarant" shall mean Tri-Star Ventures, Inc., or its successors or assigns, who is developing the Property as a condominium.

j. "Declaration" shall mean this Condominium Declaration instrument.

k. "General Common Elements" means a part of the Common Elements and includes:

- (1) The real property described in Exhibit "A" attached hereto;
- (2) All foundations, bearing walls and columns, roofs, halls, lobbies, stairways and entrances and exits or communicationways;
- (3) All exterior surfaces, yards and gardens, except as otherwise herein provided or stipulated;
- (4) All premises for the lodging of janitors or persons in charge of the Buildings, except as otherwise herein provided or stipulated;
- (5) All compartments or installations of central services, such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating reservoirs, water tanks and pumps, swimming pool(s) and the like, if any;
- (6) All other elements of the Building desirably or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Regime established by this Declaration.

l. "Lienholder" and "First Mortgagee" shall mean the holder of a first mortgage or lien on any Unit in the Condominium Project.

m. "Limited Common Elements" means those Common Elements which are reserved for the exclusive use of an individual Owner of a Unit or a certain number of individual Owners of Units. Included in this definition are:

- (1) Pipes, electrical wiring and conduits located entirely within a Unit or adjoining Units and serving only such Unit or Units,

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the designated space outside a Unit occupied by an airconditioning or heating device which serves the individual Unit, and a fireplace for the use of each Unit to the exclusion of all other Units.

n. "Majority of Unit Owners" means those Owners with fifty-one (51%) percent of the votes entitled to be cast.

o. "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

p. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, who owns, of Record, title to one (1) or more Condominium Units.

q. "Plat", "Survey Map" and "Plans" mean or include the engineering survey of the land, locating thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of, or all, the improvements, same being herewith filed, consisting of 3 sheets, labeled Exhibit "A" and incorporated herein.

r. "Premises", "Project", or "Property" means and includes the land, the Buildings, and all improvements and structures thereon and all rights, easements and appurtenances belonging thereto.

s. "Special Assessments". In addition to the common assessments described above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of deferring, in whole or in part:

(1) 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

(2) The expense of any other contingencies or unbudgeted costs. Provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to the interest in the Common Elements owned by each. The Association, after due notice and hearing, shall also have the authority to establish and fix a special assessment upon any Unit to secure the liability of the Owner of such Unit

to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach shall require an expenditure by the Association for repair or remedy. Special assessments may be billed or collected on a monthly basis. The above mentioned liability of any Owner is to be established as set forth in this Declaration.

t. "Unit" shall mean the elements of an individual Condominium Unit which are not owned in common with the Owners of the other Condominium Units in the Project as shown on the plats, which are exhibits attached hereto, and each Unit shall include the air space assigned thereto. The boundaries of each such Unit space shall be portions of the Building as described and the air space so encompassed, excepting the Common Elements. In interpreting deeds, mortgages, deeds of trust and other instruments, the existing physical boundaries of the Unit or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries, regardless of settling, rising or lateral movement of the Building and regardless of variances between boundaries shown on the Plat and those of the Building. The individual ownership of each Unit space herein defined shall further include the interior construction, partitions, appliances, fixtures and improvements which are intended to exclusively serve such Unit space, such as interior room walls, floor coverings or finish, closets, cabinets, shelving, individual bathroom and kitchen fixtures, plumbing and appliances, individual lighting and electrical fixtures and other separate items of chattels belonging exclusively to such Unit, any of which may be removed, replaced, disposed of or otherwise treated without affecting any other Unit space or ownership, use or enjoyment thereof. The air conditioning and heating devices attached to a Unit and exclusively serving the Unit shall be a part of the Unit. None of the land in this Project on which any Unit space or porch space is located shall be separately owned, as all land in this Project shall constitute part of the "Common Elements" of the Property as herein defined, and shall be owned in common by the Owners of the Units in this Condominium Project. It is intended the term "Unit", as used in this Declaration, shall have the same meaning as the term "Apartment" as used in the Act.

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ARTICLE II

CONDOMINIUM UNIT DESIGNATIONS AND DESCRIPTIONS

2.1 RECORDATION OF PLAT. The Plat shall be filed for Record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any Condominium Unit. Such Plat consists of and sets forth:

- a. The legal description of the surface of the land;
- b. The linear measurements and location, with reference to the exterior boundaries of the land, of the Buildings and all other improvements constructed, or to be constructed, on said land by Declarant;
- c. The exterior boundaries and number of each Unit, expressing its square footage, and any other data necessary for its identification, which information will be depicted by a Plat of such floor of each Building showing the letter of the Building, the number of the floor and the number of the Unit.
- d. The location of the Limited Common Elements.

2.2 DESIGNATION OF UNITS. The Property is hereby divided into two (2) separately designated Buildings consisting of eight (8) separately designated Units. Each Unit is identified by number and each Building is identified by letter on the Map. The remaining portion of the Premises, referred to as the Common Elements, shall be owned in common by the Owners. The Owners of each Unit shall own an undivided interest in said Common Elements, the percentage or fraction thereof for each Unit being as shown on the attached Exhibit "B".

2.3 LIMITED COMMON ELEMENTS. There are no portions of the Common Elements which are set aside and reserved for the exclusive use of the individual Owners and referred to as Limited Common Elements other than those referred to in paragraph 1.1m herein.

2.4 REGULATION OF COMMON AREAS. Portions of the Common Areas are intended as recreation areas, and are improved with green areas, fishing piers, patios, boat docks, and other facilities. Reasonable regulations governing the use of such facilities by Owners and by their guests and invitees

shall be promulgated by the Declarant, or by the Board of Directors of the Association after the same has been elected. Such regulations shall be permanently posted at the office and/or elsewhere in said recreational areas, and all Owners shall be furnished with a copy thereof. Each Owner shall be required to strictly comply with said Rules and Regulations, and shall be responsible to the Association for the compliance therewith by the members of their respective families, relatives, guests or invitees, both minor and adult.

2.5 INSEPARABLE UNITS. Each Unit and its corresponding prorata interest in and to the Common Elements appurtenant thereto shall be inseparable and may not be conveyed, leased or encumbered separately, and shall at all times remain indivisible.

2.6 DESCRIPTIONS. Every deed, lease, mortgage, trust deed or other instrument may legally describe a Condominium Unit by its identifying Building letter and Unit number, as shown on the plat, followed by the words Leeward Cove, a Condominium Project and by reference to this recorded Declaration and plat. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the Common Elements.

2.7 ENCROACHMENTS. If any portion of the Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion or portions of a Unit or Units encroach upon the Common Elements, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or the individual Units.

2.8 GOVERNMENTAL ASSESSMENT. Declarant shall give written notice to the Assessor's Office of the creation of Condominium Ownership of this Property, as is provided by law, so that each Unit and its percentage of fraction of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation.

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2.9 USE AND OCCUPANCY RESTRICTIONS.

a. Subject to the provisions of this Declaration and By-Laws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed. Each Unit or any two (2) or more adjoining Units used together shall be used for residential purposes or such other uses permitted by this Declaration, and for no other purposes. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from:

- (1) Maintaining his personal professional library;
- (2) Keeping his personal business or professional records

or accounts; or

- (3) Handling his personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions.

b. Reserved.

c. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees

and licensees for access, ingress to and egress from the respective Units and for other purposes incidental to use of the Units; provided, however, any other areas designed for specific use, if any, shall be used for the purposes approved by the Board.

d. The use, maintenance and operations of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner.

e. Without limiting the generality of the foregoing provisions of this Paragraph 2.9, use of the Property by the Unit Owners shall be subject to the following restrictions:

(1) Nothing shall be stored in the Common Elements without prior consent of the Board, except in storage areas or as otherwise herein expressly provided;

(2) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or the Common Elements which will result in the cancellation of insurance on any Unit, or any part of the Common Elements, or which will be in violation of any law;

(3) No waste shall be committed in or on the Common Elements;

(4) Subject to the Declarant's rights under Paragraph 2.9e(14)(d) of this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or Common Elements without the prior written consent of the Board or the written consent of the Managing Agent acting in accord with the Board's direction;

(5) No noxious or offensive activity shall be carried on, in or upon the Common Elements, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Unit Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board shall have the right to determine in accordance with the By-Laws if any such noise, odor or activity constitutes a nuisance. Without limiting speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed

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off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Unit Owner in the Property, shall not be located, used or placed on any portion of the Property or exposed to the view of other Unit Owners without prior written approval of the Board;

(6) Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board;

(7) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board, or the Declarant;

(8) No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Unit or the Common Elements, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its Occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles approved by the declarant or the Board. No clothing or household fabrics shall be hung, dried or aired in such way in any unit or on the project so as to be visible outside the unit, and no lumber, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property, except within an enclosed structure or if appropriately screened from view;

(9) No Unit Owner shall park, store or keep any vehicle, except wholly within the Parking Space designated therefor, and any inoperable vehicle shall not be stored in a Parking Space or within the Common Elements in general. No Unit Owner shall park, store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicle equipment, mobile or otherwise, deemed to be a nuisance by the Board), or any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle deemed to be a nuisance by the Board). No Unit Owner shall

conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Common Elements. Parking Spaces shall be used for parking purposes only;

(10) Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Property, except as approved by the Board;

(11) Motorcycles, motorbikes, motor scooters or other similar vehicles shall not be operated within the Property except for the purpose of transportation directly from a Parking Space to a point outside the Property, or from a point outside the Property directly to a Parking Space;

(12) No animals, livestock, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or the Common Elements. Dogs, Cats, fish, birds and other household pets may be kept in Units subject to rules and regulations adopted by the Association only upon first receiving written approval from the Board, provided they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, the Association may determine a reasonable number in any instance to be more or less, and the Association may limit the size and weight of any household pets allowed. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Unit Owner. Animals belonging to Unit Owners, Occupants or their licensees, tenants or invitees within the Property must be kept either within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Board. Should any animal belonging to a Unit Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it has control over the Association) or a person designated by Declarant to do so, and subsequent thereto by the Association or its Managing

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Agent, to a pound under the jurisdiction of the local municipality in which the Property is situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Unit Owner shall be absolutely liable to each and all remaining Unit Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by a Unit Owner or members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Unit Owner to clean up after such animals which have used any portion of the Common Elements;

(13) No Unit Owner shall be permitted to lease less than the entire Unit. Every lease shall be in writing, and a copy of such lease, as and when executed, shall be furnished to the Board. Every such lease shall provide that the lessee shall be bound by and subject to all of the obligations under the Declaration and By-Laws of the Unit Owner making such lease and failure to do so shall be a default thereunder. The Unit Owner making such lease shall not be relieved thereby from any of said obligations;

(14) In order that Declarant may establish the Property as a fully occupied Condominium, no Unit Owner nor the Association shall do anything to interfere with, and nothing in the Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing in any Unit owned by them whatever they determine to be necessary or advisable in connection with the completion of any work thereon; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives from erecting, constructing and maintaining on the Common Elements or any Unit owned or controlled by Declarant, its successors or assigns, or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing any work and establishing the Property as a Condominium and disposing of the same by sale, lease or otherwise; or

(c) Prevent Declarant, its successors or assigns, or its or their representatives, from maintaining a Sales Office and

maintaining and showing model Units to aid in the marketing of Units during the Construction Period; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs for marketing of Units on the Property.

(15) All visible window coverings shall be uniform to the exterior.

ARTICLE III

RIGHTS AND OBLIGATIONS OF OWNERSHIP

3.1 OWNERSHIP. A Condominium Unit will be a fee simple estate and may be held and owned by any person, firm, corporation or other entity singularly, as joint tenants, as tenants-in-common, or in any real property tenancy relationship recognized under the laws of the State of Texas.

3.2 PARTITION. The Common Elements (both General and Limited) shall be owned in common by all of the Owners of the Condominium Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements other than that as specifically provided for hereinafter in Paragraph 6.2, "Judicial Partition". Nothing contained herein shall be construed as limitation of the right of partition of a Condominium Unit between the Owners thereof, but such partition shall not affect any other Condominium Unit.

3.3 EXCLUSIVENESS OF OWNERSHIP. Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Owner shall have unrestricted right of ingress and egress to his or her Unit. This right is perpetual and passes with the Unit estate as transfers of ownership of the Unit occur.

3.4 ONE-FAMILY RESIDENTIAL DWELLING. Each Condominium Unit shall be occupied and used or leased by the Owner only as and for a residential dwelling for the Owner, his family, his social guests or his tenants.

3.5 MECHANIC'S AND MATERIALMAN'S LIENS. No labor performed or materials furnished and incorporated in a Unit, notwithstanding the consent or request of the Owner, his agent, contractor or subcontractor, shall be the basis for filing of a lien against the Common Elements owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit

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of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

3.6 RIGHT OF ENTRY. The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

3.7 OWNER MAINTENANCE. An Owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed with the Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall be responsible for his own heating and cooling system.

3.8 ALTERATION. An Owner shall do no act nor any work that will impair the structural soundness and integrity of the Building or impair any easement or hereditament. No Owner shall in any way alter, modify, add to or otherwise perform any work whatever that interferes with the rights of the other Unit Owners upon any of the Common Elements, Limited or General, without the prior written consent and approval in writing by the Board of Directors and the consent of all Owners effected and the first lien mortgagees of all effected Owners.

3.9 RESTRICTION OF OWNERSHIP. As a restriction of the ownership provisions set forth in Paragraph 1.1t, "Unit," an Owner shall not be deemed to own the unfinished surfaces of the perimeter walls, floors, ceilings, and roofs surrounding his Unit. An Owner shall be deemed to own and shall maintain the inner, finished surfaces of the perimeter and interior walls, floors and ceilings, doors, windows and other such elements consisting of paint, wallpaper and other such finishing material.

3.10 LIABILITY FOR NEGLIGENT ACTS. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests, tenants, or invitees, and such is not covered or paid for by insurance either on such Unit or the Common Elements, the cost of such

maintenance or repairs shall be added to and become a part of the Assessment to which such Unit is subject, pursuant to Article IV hereof.

3.11 SUBJECT TO DECLARATION AND BY-LAWS. Each Owner shall comply strictly with the provisions of this Declaration, the By-Laws and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due to damages or for injunctive relief, or both, together with costs of suit and reasonable attorney's fees, maintainable by the Association on behalf of the Owners, or, in proper case, by an aggrieved Owner. Each Owner shall have the right to bring similar action against the Association.

ARTICLE IV

MANAGEMENT AND ADMINISTRATION

4.1 BY-LAWS. The administration of this Condominium Property shall be governed by the By-Laws of Leeward Cove Owners' Association, Inc., referred to herein as the "Association." An Owner of a Condominium Unit, upon becoming an Owner, shall be a Member of the Association and shall remain a Member for the period of his ownership. The Association shall be managed by a Board of Directors, duly appointed or elected, pursuant to the terms and conditions of the By-Laws. In addition, the Association shall enter into a management agreement upon the terms and conditions established in the By-Laws, and said management agreement shall be consistent with this Declaration.

4.2 DECLARANT CONTROL. Paragraph 4.1 notwithstanding, and for the benefit and protection of the Unit Owners and any First Mortgagees of Record for the sole purpose of insuring a complete and orderly buildout as well as a timely sellout of the Condominium Project, the Declarant will retain control of and over the Association for a maximum period not to exceed August 1, 1985, or upon the sale of seventy-five (75%) percent of the Units, whichever occurs first. It is expressly understood, the Declarant will not use said control for any advantage over the Unit Owners by way of retention of any residual rights or interests in the Association or through the creation of any management agreement with a term extending beyond

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1 January 1985 without majority Association approval upon relinquishment of Declarant control. At the end of the Declarant Control Period, the Declarant, through the Board of Directors, shall call the first annual meeting of the Association.

4.3 TEMPORARY MANAGING AGENT. During the period of administration of this Condominium Regime by Declarant, the Declarant may employ or act as a temporary manager or managing agent, who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by Declarant to him, except for the right to effect improvements. The Declarant may pay such temporary manager or managing agent such compensation as it may deem reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses of this Condominium Regime and shall be paid out of the Association budget.

4.4 SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT. Every Owner and the Declarant shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following limitations, restrictions and provisions:

- a. The right of the Association to publish rules and regulations governing use of the Common Areas and the improvements and facilities located thereon, and to establish and enforce penalties for infractions thereof;
- b. The right of the Association to charge reasonable fees for the use of the dock area, if such facility is not used by all Members equally;
- c. The right of the Association, subsequent to the Declarant Control Period, to borrow money and mortgage the Common Area and improvements for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property; providing, however, that the rights of any such Mortgagee in such property shall be subordinate to the rights of the Owners hereunder, and in no event shall any such Mortgagee have the right to terminate the Condominium Regime established by this Declaration;
- d. The right and duty of the Association to suspend the voting rights and the right to the use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Condominium Unit remains unpaid.
- e. The right of Declarant during the Declarant Control Period, or the Association after the Declarant Control Period, to grant licenses,

permits, and easements to or over all or any part of the Common Area for utilities, roads and other purposes necessary for proper operation of the Project to any public agency, authority or utility. No such dedication or transfer shall be effective unless approved by all First Mortgagees and all Owners and unless an instrument signed by the Board of Directors reflecting such vote of the Owners agreeing to such dedication or transfer and First Mortgagee approval has been duly recorded in the Condominium Records of Nueces County, Texas;

f. The right of the Association to adopt, implement and maintain a private security system for the Premises consistent with applicable laws;

g. The right of the Association to establish rules and regulations governing traffic within the Common Area, and to establish sanctions for any violation or violations of such rules and regulations;

h. The right of the Association to regulate noise within the Premises, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise;

i. The right of the Association to control the visual attractiveness of the Property, including, without limitation, the right to require Owners to eliminate objects which are visible from the Common Area and which, in the Association's judgment, detract from the visual attractiveness of the Property.

4.5 MEMBERSHIP, VOTING, QUORUM, PROXIES.

a. Membership. Any person on becoming an Owner of a Condominium Unit shall automatically become a Member of the Association. Such membership shall terminate without any formal Association action whenever such person ceases to own a Condominium Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with Leeward Cove, a Condominium Project, during the period of such ownership and membership of the Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Board of Directors may, if it so elects, issue

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one (1) membership card to the Owner(s) of a Condominium Unit. Such membership card shall be surrendered to the Secretary whenever ownership of the Condominium Unit designated thereon shall terminate.

b. Voting. Unit ownership shall entitle the Owner(s) to cast one (1) vote per Unit in the affairs of the Association, which vote will be weighted to equal the proportionate share of ownership of the Unit Owner in the Common Elements. Voting shall not be split among more than one (1) Unit Owner. The present number of votes that can be cast by the Unit Owners is sixteen (16). The combined weighted votes calculated in accordance with Exhibit "B" shall equal one hundred (100%) percent. The Declarant shall have the right to vote for unsold units.

c. Quorum. The quorum of the Unit Owners shall be as defined in the By-Laws.

d. Proxies. Votes may be cast in person or by proxy. Proxies may be filed with the Secretary before the appointed time of each meeting.

4.6 INSURANCE. The Association shall obtain and maintain at all times insurance of the type, kind, and amount provided hereinafter.

a. Hazard Insurance shall be carried in a "master" or "blanket" type policy, with premiums being paid as a common expense. The policy must cover all of the General and Limited Common Elements that are normally included in coverage including fixtures and building service equipment and common personal property and supplies belonging to the Owners Association. It must cover all perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement. The policy must cover any loss or damage by fire and all other hazards that are normally covered by standard extended coverage endorsements. Insurance should cover 100% of the current replacement cost of the project facilities, including the individual Units in a condominium project. Coverage does not need to include land, foundations, excavations or other items that are usually excluded from insurance coverage. If it can be obtained, an Agreed Amount and Inflation Guard Endorsement shall be included. If there is a construction code provision that requires changes to undamaged portions of the project even when only part of the project is destroyed by an insured hazard, then the insurance policy shall include appropriate construction code endorsements. The policy of insurance obtained shall provide that any

Insurance Trust Agreement will be recognized, the right of subrogation against Unit Owners will be waived, the insurance will not be prejudiced by any acts or omissions of individual Unit Owners that are not under the control of the Owners' Association and that the policy will be primary even if a Unit Owner has other insurance that covers the same loss. The named insured shall be stated in the policy as "Leeward Cove Owners' Association, Inc., for the use and benefit of the individual Owners." The loss payable clause shall show the Association as a trustee for each Unit Owner and the holder of each Unit's mortgage. The policy must contain the standard mortgage clause and must name as mortgagee either FNMA or the servicer of the mortgage for all the mortgages held by FNMA on the project. When a servicer is named as the mortgagee, its name will be followed by the phrase, "its successors and assigns." The insurance policy must include a provision requiring the insurer to notify in writing the Owners Association and each first mortgagee holder named in the mortgage clause at least ten (10) days before it cancels or substantially changes the coverage.

b. Flood Insurance for the amount equal to the lesser of 100% of the current replacement cost of all buildings and other insurable property or the maximum coverage available for the property under the National Flood Insurance Program.

c. Liability Insurance. The Owners Association must maintain a comprehensive general liability insurance policy covering all common areas, public ways and other areas under its supervision. The policy must provide coverage of at least \$1,000,000 (one million dollars) for bodily injury and property damage for any single occurrence. It must provide coverage for bodily injury and property damage that results from the operation, maintenance or use of the project's common areas, and any legal liability that results from a law suit related to employment contracts in which the Owners Association is a party. The policy must provide for at least ten (10) days written notice to the Owners Association and to the holder of each first mortgage on an individual Unit before the policy may be cancelled or substantially modified.

d. The Association shall be responsible for obtaining insurance upon the Units, including all fixtures, installation or additions thereto contained within the unfinished interior surfaces of the perimeter walls,

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floors, and ceilings of such Unit, as initially installed or replacements thereof. Each Unit Owner may obtain additional insurance at his own expense for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner are specifically made the responsibility of each Unit Owner. Each Unit Owner must furnish a copy of his insurance policy to the Association.

ARTICLE V

MAINTENANCE ASSESSMENTS

5.1 ASSESSMENTS FOR COMMON EXPENSES. All Owners shall be obligated to pay the estimated assessments imposed by the Association to meet the Common Expenses. Assessments for the estimated Common Expenses shall be due monthly in advance on or before the first (1st) day of each month. Failure to pay by the fifteenth (15th) day of each month shall require the imposition and assessment of a late charge to be determined by the Board of Directors. Contribution for monthly assessments shall be prorated if the ownership of a Condominium Unit commences a day other than the first (1st) day of a month.

5.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, welfare and recreation of the residents in the Property, and in particular for the improvement, maintenance and preservation of the Property, the services and the facilities devoted to said purposes that are related to the use and enjoyment of both the Common Elements and the Units situated upon the Property. Such uses may include, but are not limited to, the cost of the Association of the following: all insurance, repair, replacement and maintenance of the Common Elements; fire extended coverage, vandalism, malicious mischief and liability insurance for the Condominium Units; management costs, taxes, legal and accounting fees as may from time to time be authorized by the Association; construction of other facilities; maintenance of easements upon, constituting a part of, appurtenant to or for the benefit of the Property; mowing grass, caring for the grounds and landscaping; roofs and exterior surfaces of all Buildings and carports; garbage pickup; pest control; street maintenance; outdoor lighting; security service for the Property; water and sewer service furnished to the Property by or through the Association; discharge of any liens on the Common Elements and other charges required by this Condominium Declaration, or other charges that the Association is authorized

to incur. In addition, the Association shall establish a reserve for repair, maintenance and other charges as specified herein.

5.3 DETERMINATION OF ASSESSMENTS. The assessments shall be determined by the Board of Directors based upon the cash requirements necessary to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements. This determination may include, among other items, taxes, insurance, governmental assessments, landscaping and grounds care, Common Area lighting, boat dock area repairs and renovation, garbage collections, wages, water charges, legal and accounting fees, management costs and fees, expenses and liabilities incurred in the operation and maintenance of recreation and administrative facilities, payment of any deficit remaining from a previous period and the creation of a reserve contingency fund. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from the obligation to pay.

5.4 INITIAL ASSESSMENT AND MAXIMUM MONTHLY ASSESSMENT.

a. The monthly assessments shall be made according to each Owner's proportionate or percentage interest in and to the Common Elements provided in Exhibit "B" attached hereto.

b. The initial assessment shall be established by the Board of Directors. As of January 1st following the end of the Declarant control period, the Association may set the monthly assessment for the next succeeding twelve (12) month period at an amount which shall not exceed one hundred ten (110%) percent of the monthly assessment allowed for January of the preceding year. If the Board determines at any time during the calendar year that a greater increase of the monthly assessment is required to adequately perform the duties and responsibilities of the Association and pay all expenses thereof, then the Board may call a special meeting of the Owners. By the assent of a sixty-seven (67%) percent vote of the quorum of Owners present at such meeting, the monthly assessment may be set at whatever level such Owners approve. The new assessment shall become the basis for future and annual increases, using the one hundred ten (110%) percent formula, as above outlined.

c. The Board of Directors shall be authority to lower the monthly assessment, if it deems feasible.

5.5 OBLIGATION OF DECLARANT FOR ASSESSMENTS AND MAINTENANCE. Commencing with the date of the first closing, the Declarant shall be responsible to make monthly assessments payments just as any Owner; however, Declarant shall not be

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required to contribute an unsold unit's share of the working control fund until sixty (60) days after the closing of the first unit. When the Declarant sells a unit for which it has contributed to the capital fund, the Declarant shall be entitled to reimbursement from the purchaser.

5.6 SPECIAL ASSESSMENTS FOR IMPROVEMENTS. Subsequent to the Declarant Control Period and in addition to the annual assessments authorized above, at any time, the Association may levy in any calendar year a special assessment applicable to the year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall be approved by a sixty-seven (67%) percent vote of the quorum of Owners voting in person or by proxy at a meeting duly called for this purpose. The Declarant will be treated as all other Unit Owners for purposes of special assessments.

5.7 COMMENCEMENT OF ASSESSMENTS. The monthly assessments provided for herein shall be due on the first (1st) day of the month. The assessments shall be prorated if the ownership of a Unit commences on a day other than the first (1st) day of the month. On Units owned by the Declarant, the assessment shall commence on the date of the first closing. The Board shall fix the amount of the monthly assessments against such Unit at least thirty (30) days prior to January 1st of each year. Written notice of the monthly assessment adjustment shall be sent to every Owner subject thereto.

5.8 NO EXEMPTION. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements or by abandonment of his Unit.

5.9 LIEN FOR ASSESSMENTS.

a. All sums assessed but unpaid by a Unit Owner for its share of Common Expenses chargeable to its respective Condominium Unit, including

including interest thereon at a rate set by the Board, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances, except only for:

(1) All taxes and special assessments levied by governmental and taxing authorities, and

(2) All liens securing sums due or to become due under any mortgage vendor's lien or deed of trust filed for Record prior to the time such costs, charges, expenses and/or assessments become due.

b. To evidence such lien the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such notice shall be signed by one (1) of the Board of Directors and may be recorded in the Office of the Clerk and Recorded at Nueces County, Texas. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association. Any such foreclosure sale is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Texas Law, in connection with the assessment lien. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect same. The Association shall have the power to bid on the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

c. The amount of the Common Expenses assessed against each Condominium Unit shall also be a debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

d. In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without recourse, a vendor's lien against each Unit to secure payment of a common assessment or special assessment which is levied pursuant to the terms hereof. Said liens may be enforced by appropriate judicial proceedings and the expenses incurred in connection therewith, including, but not limited to, interest, costs and reasonable

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attorney's fees, shall be chargeable to the Owner in default. Such lien shall be subordinated and inferior to those liens listed in Subparagraphs 5.9a(1) and (2).

e. Any encumbrancer holding a lien on a Condominium Unit may pay any unpaid Common Expense payable with respect to such Unit, and upon such payment, such encumbrancer shall have a lien on such Unit for the amount paid of the same rank as the lien of his encumbrance.

5.10 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the Assessments provided for herein shall be subordinate to the lien of any prior recorded mortgage or mortgages granted or created by the Owner of any Condominium Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Unit. Sale or transfer of any Unit shall not affect the assessment lien; provided, however, that the sale or transfer of any Condominium Unit pursuant to a foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments thereof coming due prior to such sale or transfer. No sale or transfer of any Unit shall relieve such Condominium Unit, or the Owners thereof, from liability for any assessment thereafter becoming due from the lien thereof.

5.11 PAYMENT OF ASSESSMENT UPON SALE. Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his prorata share in the expenses shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature except the following:

a. Assessments, liens, and charges in favor of the state and any political subdivision thereof for taxes past due and unpaid on the apartment; and

b. Amounts due under mortgage instruments duly recorded.

ARTICLE VI

DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS

6.1. DESTRUCTION OR OBSOLESCENCE.

a. This Declaration hereby makes mandatory the irrevocable appointment of an Attorney-In-Fact to deal with the Property upon its destruction, obsolescence or condemnation. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any Grantee of a deed from the Declarant or from any Owner shall constitute appointment of the Attorney-In-Fact herein provided. All of the Owners irrevocably constitute and appoint Leeward Cove Owners' Association, Inc., or its successor nonprofit corporation, if same be hereafter organized, their true and lawful Attorney in their name, place and stead, for the purpose of dealing with the Property upon its destruction, obsolescence or condemnation, as hereinafter provided. As Attorney-In-Fact, the Association, by its authorized officers, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Condominium Unit Owner which is necessary and appropriate to exercise the powers herein granted.

b. Repair and reconstruction of the improvement(s), as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in existence prior to the damage, with each Unit and Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements, in accordance with the provisions set forth hereinafter:

(1) In the event of damage or destruction due to fire or other disaster, where the damage is not more than sixty-six and two-thirds (66-2/3%) percent of the value of the Property, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as Attorney-In-Fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

(2) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is no more than sixty-six and two-thirds (66-2/3%) percent of all the improvements,

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such damage or destruction shall be promptly repaired and reconstructed by the Association, as Attorney-In-Fact, using the proceeds of insurance and the proceeds of an assessment to be made against the co-owners directly affected and their Condominium Units. Such deficiency assessment shall be a special assessment made pro-rata according to each Owner's proportionate interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article V hereof. In addition thereto, the Association, as Attorney-In-Fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency of the assessment within the time provided; and, if not paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as Attorney-In-Fact, in the following order:

- (a) For payment of taxes and special assessment liens in favor of any governmental assessing entity;
- (b) For payment of the balance of the lien of any First Mortgage;
- (c) For payment of unpaid Common Expenses;
- (d) For payment of junior liens and encumbrances in the order and extent of their priority; and
- (e) The balance remaining, if any, shall be paid to the Condominium Unit Owner.

(3) If the insurance proceeds are insufficient to repair or reconstruct the improvements and if more than sixty-six and two-thirds (66-2/3%) percent of all of the improvements are destroyed or damaged, and if the Owners representing the aggregate ownership of one hundred (100%) percent of the Common Elements, do not voluntarily, within

one hundred (100) days thereafter, make provision for reconstruction, which plan must have the approval or consent of all of the First Mortgagees, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary the entire remaining Premises shall be sold by the Association, as Attorney-In-Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into sixteen (16) separate accounts, each such account representing one (1) of the Condominium Units in the total Project. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney-In-Fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any one (1) account to another, toward the full payment of the lien of any first mortgage against the Condominium Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire Property. Such apportionment shall be based upon each Condominium Unit Owner's proportionate interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one (1) account to another, by the Association, as Attorney-In-Fact, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

(4) If the insurance proceeds are insufficient to repair or reconstruct the improvements, and if more than sixty-six and two-thirds (66-2/3%) percent of all the improvements are destroyed or damaged, and if the Owners representing a total ownership interest of one hundred (100%) percent of the Common Elements adopt a plan for reconstruction, which plan has the approval of one hundred (100%) percent of the First Mortgagees, then all of the Owners shall be bound by the terms and provisions of such plan. An assessment may be made pro-rata against

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the Owners directly affected by the damage according to each Owner's proportionate interest in the Common Elements and shall be due and payable as provided by the terms of the plan. The Association shall have the authority to cause the repair and restoration of the improvements using all of the insurance proceeds for such purpose. The Assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Paragraph 5.9 hereof. In addition thereto, the Association, as Attorney-In-Fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided. If the assessment is not paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from sale of such Condominium Unit shall be used and disbursed by the Association, as Attorney-In-Fact, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

(5) The Owners representing an aggregate ownership interest of one hundred (100%) percent of the General Common Elements, may agree that the General Common Elements of the Property are obsolete and that the same should be renewed or reconstructed. In such instance, the expenses thereof shall be payable by all of the Owners as Common Expenses.

(6) The Owners representing an aggregate ownership interest of one hundred (100%) percent of the Common Elements and all holders of first mortgages may agree that the Common Elements of the Property are obsolete and that the same should be sold. In such instance, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's authorized officers, the entire Premises shall be sold by the Association, as Attorney-In-Fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The sales proceeds shall be apportioned between the Owners and First Mortgagees as their interests may appear on the basis of each Owner's percentage or fraction of interest in the Common Elements, and such apportioned proceeds shall be paid into sixteen (16) separate accounts, plus any annexed Units, each such account representing one (1) Condominium Unit. Each such account shall be

in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney-In-Fact, shall use and disburse the total amount of each of such funds, without contribution from one (1) fund to another, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

6.2 JUDICIAL PARTITION. There shall be no judicial partition of the Common Elements, nor shall Declarant or any person acquiring any interest in the Project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph 6.1 hereof in the case of damage or destruction or unless the Property has been removed from the provisions of the Texas Condominium Act; provided, however, that if any Condominium Unit shall be owned by two (2) or more co-tenants, as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition between such co-tenants, but such partition shall not affect any other Condominium Unit.

6.3 CONDEMNATION.

a. If all or any part of the Property is taken or threatened to be taken in eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association, as Attorney-In-Fact, and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all First Mortgagees known to the Association to have an interest in any Condominium Unit. The expense of participation in such proceedings by the Association shall be borne by the Common Fund. The Association, as Attorney-In-Fact, is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association, as Attorney-In-Fact, and such damages or awards shall be applied as provided herein. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Condominium Unit), the Association, as Attorney-In-Fact, in addition to

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the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such Property to the condemning authority in lieu of such condemnation proceeding.

b. With respect to any such taking of the Common Elements alone, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the account of each Owner in proportion to his percentage or fractional ownership interest in the Common Elements as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof, unless restoration takes place as herein provided. The Association shall call a meeting of the Owners, at which meeting the Owners, in accordance with section 8.1 (with the consent of the mortgagees as provided in section 7.7 and 8.1b, if applicable), shall decide whether to replace or restore, as far as possible, the Common Elements so taken or damaged. In the event it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Map attached hereto must be duly amended by instrument executed by the Association, as Attorney-In-Fact, on behalf of the Owners. In the event that such eminent domain proceeding results in the taking of or damage to one (1) or more, but less than all of the Units, awards for such taking shall be determined for each Condominium Unit and the following shall apply:

(1) The Association shall determine which of the Condominium Units damaged by such taking may be made tenantable for the purposes set forth in this Declaration, taking into account the nature of this Condominium Project and the reduced size of each Condominium Unit so damaged.

(2) The Association shall determine whether it is reasonably practicable to operate the remaining Condominium Units of the Project, including those damaged Units which may be made tenantable, as a Condominium in the manner provided in this Declaration.

(3) In the event that the Association, pursuant to section 6.3b(2), and all Owners and Mortgagees determine that it is not reasonably practicable to operate the undamaged Condominium Units and the damaged Units which can be made tenantable and the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors, then the Condominium Project shall be regrouped and merged into a single estate owned jointly in undivided interests by all remaining Owners, as tenants-in-common, in the proportionate ownership interest owned by each Owner in the Common Elements after the condemnation

proceedings. The award for the partial or total condemnation of a given Unit shall be paid to the Owner of the same based on the value of the portion of his Unit and its Common Element interest taken as determined in the condemnation proceeding. The distribution shall be carried out in accordance with Subparagraph 6.1b(2) (a) through (e) hereof.

(4) In the event that the Association determines it will be reasonably practicable to operate the undamaged Condominium Units and the damaged Units which can be made tenantable as a Condominium Project, then the damages and awards made with respect to each Unit which has been determined to be capable of being made tenantable shall be applied to repair and to reconstruct such Condominium Unit so that it is made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against those Condominium Units which are directly affected. With respect to those Units which, in the opinion of the Association, may not be tenantable, the award made shall be paid to the Owner of the untenable Unit based on the value of the portion of his Unit and its Common Element interest taken as determined in the condemnation proceeding. The distribution shall be carried out in accordance with Subparagraph 6.1b(2)(a) through (e) hereof. If the approval of the Owners and Mortgagees (as required by Section 7.7, 7.12 and 8.1 hereof) is obtained the remaining portion of such Units, if any, shall become part of the Common Elements; such Condominium Unit shall no longer be a part of the Condominium Project; and the proportionate ownership interest in the Common Elements appurtenant to each remaining Condominium Unit (which shall continue as part of the Condominium Project) shall be equitably adjusted to distribute the ownership of the undivided interests in the Common Elements among the reduced number of Owners. If all of the Condominium Units are taken or damaged by such taking, all damages and awards shall be paid to the accounts of the Owners of Units, as provided herein, in proportion to their percentage or fractional ownership interests in the Common Elements and this Condominium Regime shall terminate upon such payment. Upon such termination, any Condominium Units and Common Elements remaining shall be regrouped and merged into a single estate owned in undivided interests by all Owners as tenants-in-common in the proportionate ownership interest previously owned by each Owner in the Common Elements. Any damages or awards provided in this paragraph to be paid to or for the account of any

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Owner by the Association shall be applied as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof.

ARTICLE VII
PROTECTION OF MORTGAGEE

7.1 NOTICE TO ASSOCIATION. An Owner who mortgages his Unit shall notify the Association, giving the name and address of his Mortgagee. Each Mortgagee shall be permitted to notify the Association of the fact that such Mortgagee holds a deed of trust or mortgage on a Condominium Unit. The Board shall maintain such information in a book entitled "Mortgagees of Condominium Units."

7.2 NOTICE OF DEFAULT. The Association shall notify a First Mortgagee in writing, upon request of such Mortgagee, of any default by the Mortgagor in the performance of such Mortgagor's obligations, as set forth in this Declaration, which is not cured within sixty (60) days.

7.3 EXAMINATION OF BOOKS. The Association shall permit holders, insurers, and guarantors of first mortgages to examine the books and records of the Association and to examine current copies of the Declaration, By-Laws, and other rules of the Project upon request.

7.4 RESERVE FUND. The Association shall establish adequate reserve funds for replacement of Common Element components and fund the same by regular monthly payments rather than by extra-ordinary special assessments. In addition, there shall be established a working capital fund for the initial operation of the Condominium Project equal to at least two (2) months estimated Common Assessments charge for each Unit, said deposit to be collected at closing of Unit sale.

7.5 ANNUAL AUDITS. The Association shall furnish each First Mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.

7.6 NOTICE OF MEETINGS. The Association shall furnish each First Mortgagee upon request of such Mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such Mortgagee to attend such meetings, one (1) such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

7.7 APPROVAL FOR AMENDMENTS TO DECLARATION, ETC. The prior written approval of fifty-one (51%) percent except where otherwise noted or where a

higher percentage is required by law or regulation in which case the higher percentage shall be required, of the First Mortgagees shall be required for changes to any of the following:

a. Abandonment or termination of the Condominium Regime. Concurrence of all Mortgagees is required.

b. Any material amendment to the Declaration or to the By-Laws of the Association, including, but not limited to: (1) voting rights; (2) assessments, assessment liens, or subordination of assessment liens; (3) reserves for maintenance, repair and replacement of common areas; (4) responsibility for maintenance and repairs; (5) reallocation of interests in the general or limited common areas, or rights to their use; (6) boundaries of any unit; (7) convertibility of units into common areas or vice versa; (8) expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project; (9) insurance or fidelity bonds; (10) leasing of units; (11) imposition of any restrictions on a unit owner's right to sell or transfer his or her unit; (12) a decision by the Owners' Association to establish self-management when professional management had been required previously by an eligible mortgage holder; (13) restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; (14) any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or (15) any provisions that expressly benefit mortgage holders, insurers or guarantors.

c. The effectuation of any decision by the Owners' Association to terminate professional management and assume self-management of the Project.

7.8 NOTICE TO MORTGAGE HOLDERS, INSURERS AND GUARANTORS.

a. The holder, insurer or guarantor of the mortgage on any Unit in the Project shall be given timely written notice of:

- (1) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage;
- (2) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
- (3) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association;
- (4) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders;

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b. To obtain this information, the mortgage holder, insurer or guarantor must send a written request to the Association stating both its name and address and the unit number it has the mortgage on.

7.9 MANAGEMENT AGREEMENTS. Any management agreement and/or service contract entered into by the Association will be terminable by the Association without payment of a termination fee for cause upon not more than thirty (30) days written notice or without cause upon ninety (90) days written notice, and the term of such management agreement will not exceed the period of one (1) year, renewable by agreement of the parties to such agreement for successive one (1) year periods. In the event of the termination of the management agreement, as provided herein, the Association shall enter into a new management agreement with a new management agent prior to the effective date of the termination of old management agreement.

7.10 RIGHT TO PARTITION. No Unit may be partitioned or subdivided by the Owner thereof without the prior written approval of all First Mortgagees.

7.11 TAXES, ASSESSMENTS AND CHARGES. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominium Units and not to the Condominium Project as a whole.

7.12 OTHER ACTS BY ASSOCIATION REQUIRING APPROVAL OF FIRST MORTGAGEES OR OWNERS. Unless all of the First Mortgagees (based upon one (1) vote for each first mortgage owned), and Owners of the individual Condominium Units have given their prior written approval, the Association shall not be entitled to:

a. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer, the Common Elements, except as provided for in Paragraph 2.10 hereof; and

b. Use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units or as otherwise provided in this Declaration. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this Paragraph.

ARTICLE VIII
MISCELLANEOUS PROVISIONS8.1 AMENDMENT.

a. The Declaration may only be amended at a meeting of Unit Owners at which the amendment is approved by the holders of at least sixty-seven (67%) percent of the ownership interests in the Condominium.

b. An amendment of the Declaration may not alter or destroy a Unit or a Limited Common Element without the consent of the Owners affected and the Owner's first lien mortgagees.

c. No amendment shall affect Declarant's right to exercise the duties and functions of the Board of Directors, as allowed in Paragraph 4.2 hereof or alter or amend the rights given to Declarant in Paragraph 2.9(e) (14) hereof.

8.2 RESERVED.

8.3 OWNERSHIP OF COMMON PERSONAL PROPERTY. Upon termination of the Construction Period, as defined herein, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the Premises, furnished by Declarant, and intended for the common use and enjoyment of the Condominium Unit Owners and occupants. No Owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the Owner's termination of possession of his Condominium Unit.

8.4 CHANGE IN DOCUMENTS. The holder of any mortgage covering any of the Condominium Units shall be entitled to written notification from the Association thirty (30) days prior to the effective date of any change in the Condominium documents.

8.5 RESERVED.

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8.6 NOTICE. All notices, demands or other notices intended to be served upon an Owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such Owner to the address last furnished by said Owner. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association, shall be sent by ordinary or certified mail, postage prepaid, to 15201 Leeward Drive, Corpus Christi, Texas 78418 until such address is changed by a notice of address change duly recorded in the Nueces County Condominium Records.

8.7 CONFLICT BETWEEN DECLARATION AND BY-LAWS. Whenever the application of the provisions of this Declaration conflict with the application of any provision of the By-Laws adopted by the Association, the provisions or application of this Declaration shall prevail.

8.8 INVALIDATION OF PARTS. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

8.9 OMISSIONS. In the event of the omission from this Declaration of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purpose hereof, or any part hereof, then such omitted matter shall be supplied by inference and/or by reference to the Act.

8.10 TEXAS CONDOMINIUM ACT. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Texas and to all other provisions of law.

8.11 GENDER. That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed, sealed and delivered this 19th day of December, 1983.

TRI-STAR VENTURES, INC.

By R. D. Keegan
President
R. D. Keegan

THE STATE OF TEXAS :
COUNTY OF NUECES :

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared R. D. KEEGAN known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Corporation and that they executed the same as the act of such Corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 19 day of December, 1983.

Donna Jorgensen
Notary Public in and for
Nueces County, Texas
DONNA JORGENSEN
5/10/85



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<u>Condominium Unit</u>	<u>Percentage of Common Elements</u>
A1	6.93
A2	6.05
A3	6.61
A4	5.73
A5	5.73
A6	6.61
A7	6.61
A8	5.73
B1	6.93
B2	6.05
B3	6.61
B4	5.73
B5	5.73
B6	6.61
B7	6.61
B8	5.73
	<hr/>
TOTAL	100%

Exhibit B

STATE OF TEXAS }
COUNTY OF NUECES }

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me; and was duly RECORDED, in the Volume and Page of the named RECORDS of Nueces County, Texas, as stamped hereon by me, on

JAN 4 1984



Marion Uehlinger
COUNTY CLERK
NUECES COUNTY, TEXAS

(CLERK'S NOTE: See Map Exhibit (1st of 3 Maps) in Miscellaneous Map Record Vol. 8 Pages 49-51)

FILED FOR RECORD

AT 3:55 P M

JAN 4 1984

MARION UEHLINGER
Clerk of Court, Nueces County, Texas
Marion Uehlinger
Deputy

Tristar Ventures, Inc.

Public

Condominium Declaration

GF # Misc-MB
354980

158.00

Charge + return to

C.C. Title Co.

P.O. Box 7068

Corpus Christi, Texas

78415

VBR-3
K.A. 4