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DECLARATION AND MASTER DEED
LOS ARBOLES CONDOMINIUMS
Dallas, Dallas County, Texas

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185.00 DEED
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THIS DECLARATION AND MASTER DEED ("Declaration"), made on the date hereinafter set forth, by REGAL FINANCIAL CORPORATION, a Texas corporation, ("Declarant"), is made with reference to the following facts:

A. Declarant is the owner of certain improved real property located in the City of Dallas, Dallas County, State of Texas, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Property").

B. The Property presently consists of the land described on Exhibit "A", two (2) two (2) story residential building(s) containing a total of twenty-eight (28) units therein, together with other improvements now or hereafter erected thereon, facilities and appurtenances thereto and all property, real, personal or mixed, intended for use or used in connection with the Property, being hereinafter sometimes referred to as the "Project" or the "Condominiums".

C. Declarant desires to establish a condominium regime under the Texas Condominium Act. Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the Unit plus an undivided interest as tenant in common in the Common Elements. Each Unit shall have appurtenant to it a membership in LOS ARBOLES OWNERS, INC.

D. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvements for the benefit of all of said Condominiums and the Owners thereof.

Declarant does hereby establish the Los Arboles Condominiums as a condominium regime under the Texas Condominium Act and hereby declares that the Condominiums shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project and every part thereof. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE I.
DEFINITIONS

1.1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

1.2. "Assessment" shall mean the assessment made and levied against each Owner and his Unit for that portion of the cost of maintaining, improving, repairing, operating and managing the Condominiums and for repair, maintenance and operation of the Common Elements, including reserves for replacements, which is to be paid by each Unit Owner as determined by the Association in accordance with this Declaration and the Bylaws.

1.3. "Association" shall mean and refer to the LOS ARBOLES OWNERS, INC., its successors and assigns, a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act, of which all the Owners shall be Members. The term "Association" shall have the same meaning as the term "Council of Co-Owners" in the Texas Condominium Act.

1.4. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.5. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.6. "Common Elements" shall mean and refer to both the General and Limited Common Elements described herein.

1.7. "Common Expenses" means and includes:

1.7.1. All sums lawfully assessed with respect to the Common Elements by the Board;

1.7.2. Expenses of administration and management, maintenance, repair or replacement of the Common Elements, as provided herein, including a reasonable reserve for such purposes;

1.7.3. Expenses agreed upon as Common Expenses by the Owners;
and

1.7.4. All sums designated as Common Expenses by or pursuant to the Project Documents.

1.8. "Common Interest" means the proportionate undivided interest in the Common Elements which is appurtenant to each Unit as set forth in this Declaration.

1.9. "Condominium" or "Unit" shall mean one individual unit, together with an undivided interest in the Common Elements. The term "Condominium" or "Unit" shall have the same meaning as the term "apartment" as used in the Texas Condominium Act.

1.10. "Building" shall mean the structure presently erected on the Property containing two or more Units.

1.11. "Declarant" shall mean and refer to Regal Financial Corporation, a Texas corporation and its successors-in-interest and assigns, provided such successors or assigns are designated in writing by Declarant as a successor or assign of the rights of Declarant hereunder.

1.12. "Declaration" shall mean and refer to this enabling Declaration.

1.13. "General Common Elements" shall mean and include:

1.13.1. The land in the condominium regime as more particularly described on Exhibit "A" hereto.

1.13.2. To the extent not otherwise designated as Limited Common Elements, the foundations, common dividing walls between two or more Units or between Units and Common Elements, exterior walls, bearing walls and columns (including any windows, doors, and chimneys therein), girders, beams, slabs, supports, roofs, attics, ceilings and floors, halls, lobbies, or thoroughfares such as stairways, entrances, exits or communication ways and any other portion of any Building located on the Property.

1.13.3. The grounds, yards, gardens, swimming pool, managerial offices, mail rooms, unassigned parking areas, unassigned storage areas, driveways, fences, streets, service drives, walks, service easements, recreational common areas, laundry rooms, boiler rooms, mechanical rooms, and areas used for storage of maintenance and janitorial equipment and materials, if any; provided however, that Declarant expressly reserves to itself at any time and from time to time, until the first meeting of the Association, to assign storage areas to Owners; and provided further, coincidental with the assignment of such storage areas, or after the assignment of all unassigned storage areas, the Map attached hereto may be amended without the consent of any Owner for the purpose of designating said storage areas with a number corresponding to the Unit number, and thereafter such storage areas shall be a Limited Common Element appurtenant to such Unit.

1.13.4. The installations consisting of the equipment and materials making up central services such as power, electricity, gas, water, sewer, television, air conditioning, heating, hot water, and the like which are intended to serve more than one Unit.

1.13.5. Parking spaces not designated with a Unit number and described on the Map attached hereto as unassigned parking spaces; provided, however, that Declarant expressly reserves the right for itself until the first meeting of the Association as prescribed in the Bylaws and/or the Board of Directors at any time and from time to time to assign parking spaces to Owners; and provided further, coincidental with the assignment of any parking

space, or after the assignment of all unassigned parking spaces, the Map attached hereto may be amended without the consent of any Owner for the purpose of designating any such parking space with a number corresponding to the Unit number, and thereafter such parking space shall be a Limited Common Element appurtenant to such Unit, subject to the right to reassign granted herein.

1.13.6. All other structures, facilities, equipment, and property located on the Project necessary or convenient to its existence, maintenance, operation and safety, or normally in common use.

1.13.7. All other items not described as a Unit or a Limited Common Element.

1.13.8. All repairs, replacements, and additions to any of the foregoing.

1.14. "Institutional Lender" shall mean the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other similar agency (government related or otherwise; any bank, savings and loan association, insurance company, or other similar financial institution or individual, partnership, or corporation holding a recorded first Mortgage or Deed of Trust on any Unit.

1.15. "Limited Common Elements" shall mean those Common elements reserved for the use of a specified Unit or Units to the exclusion of others, or serving exclusively one or more specified Units, the enjoyment, benefit or use of which is reserved to the lawful occupants of said Unit or Units either in this Declaration, or as indicated on the Map as same may be amended from time to time, including by way of example, but not limited to:

1.15.1. Parking spaces and storage areas once assigned and designated with a Unit number in accordance with Section 1.13.3 and 1.13.5 hereof, subject to the right to reassign granted therein;

1.15.2. Patios, balconies, entrances, stairways and storage areas, if any, indicated on the Map as Limited Common Elements appurtenant to a specified Unit or Units;

1.15.3. The utilities, sewers, power, water, gas, electricity and other common lines running through the walls, ceiling or floor of each Unit and used only to service such Unit.

1.15.4. Such portions of the perimeter walls, floors, ceilings, doors, windows, and all associated fixtures and structures therein, as lie outside the Unit boundaries but that serve only such Unit.

1.16. "Map," or "Condominium Plan" shall mean and refer to the engineering survey of the Property which is legally described in Exhibit "A", said Map being filed herewith as Exhibits "B-1" through "B-32" and by this

reference made a part hereof, as the same may be amended from time to time as herein provided. The Map sets forth, among other things, a survey of the Property showing the location of the Buildings, a general description and plat of each Unit showing its square footage, Building location, floor and Unit number and a general description of the Common Elements.

The Map contains the certificate of a registered professional engineer or registered public surveyor that the Map substantially depicts the location of the Buildings, the Units, the Unit numbers, the dimensions of the Units and that such Map was prepared subsequent to the completion of the improvements. In interpreting the Map, the existing physical boundaries of each Unit shall be conclusively presumed to be its boundaries. Declarant reserves unto itself the right, until the first meeting of the Association as prescribed in the Bylaws, to amend the Map and amendments thereto to conform same to the actual location of any of the improvements, to establish, vacate and relocate easements, access road easements, parking spaces, to establish certain General Common Elements not theretofore established, to establish certain General Common Elements as Limited Common Elements, to show such other changes that Declarant may make in accordance with the terms of this Declaration including, but not limited to, Section 2.3.

1.17. "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.18. "Mortgage" or "Deed of Trust" shall mean a lien interest in a Unit given to a creditor as security for repayment of a loan made to the Unit Owner, said interest to be evidenced by an instrument duly and properly recorded in the Deed of Trust Records of Dallas County, Texas.

1.19. "Mortgagee" shall mean the beneficiary or a holder of any first lien Deed of Trust or Mortgage.

1.20. "Owner" or "Owners" shall mean and refer to the record holder or holders of fee simple title of a Unit in the Project, but shall exclude Persons having any interest in a Unit merely as security for the performance of any obligation.

1.21. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.22. "Project Documents" means and includes this Declaration and the exhibits attached hereto, the Articles and Bylaws of the Association and the rules and regulations for the Members, as the same may be established or amended from time to time.

1.23. "Texas Condominium Act" or "Act" shall mean Article 1301a of the Texas Revised Civil Statutes, enacted in 1963, which permits the creation of condominium regimes, as same is amended or supplemented in any successor statute.

ARTICLE II.
DIVISION OF PROJECT AND
CREATION OF PROPERTY RIGHTS

2.1. Division of Project. The Project is hereby divided into the following freehold estates and areas: On the Map attached hereto, the Buildings in the Project are shown and the Units located therein are numbered as shown on the Map.

2.1.1. Units. In determining dimensions of, and area contained within each Unit, the enclosed space within a Unit shall be measured from interior finished, unpainted surfaces of the perimeter walls, floors and ceilings, and the Unit shall include the airspace so encompassed. Included in each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the common exterior walls or interior walls, floors or ceilings (such as, but without limitation, paint wallpaper, vinyl wall or floor covering, carpet and tile). The boundaries of each Unit shall be the interior surface of the perimeter walls, floors, ceilings, windows, and doors. Interior trim around windows and doors shall be a part of each Unit and shall not be a part of the Common Elements. The Unit does not include "Common Elements" defined herein. It is expressly stipulated, and each and every purchaser of a Unit, his heirs, executors, administrators, successors and assigns hereby agree that the square footage, size and dimensions of each Unit, as set out and shown in this Declaration or on the Condominium Plan are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimensions shown by the Condominium Plan thereof. Each purchaser and Owner of a Unit, or interest therein, has had full opportunity and is under a duty to inspect and examine the Unit purchased by him prior to the purchase thereof, and agrees that the Unit is purchased as actually and physically existing. Each purchaser of a Unit hereby expressly waives any claim or demand which he may have against the Declarant or other seller of such Unit on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the Condominium Plan. Each Unit is subject to such encroachments and protrusions as are contained in the Building, whether the same now exist or may be later caused or created in any manner. In interpreting deeds and the Condominium Plan, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling, rising or lateral movement of the Buildings and regardless of minor variance between boundaries shown on the Condominium Plan or deed, and those of the Buildings.

2.1.2. Common Elements. The remaining portion of the Property, referred to herein as "Common Elements", shall include all

of the elements set forth in Section 1.6. Each Unit Owner shall have as an appurtenance to his Unit, an undivided percentage interest in the Common Elements, based upon the approximate size of his Unit in relation to the other, as set forth in Exhibit "B-32" attached hereto and by this reference made a part hereof. The ownership of each Condominium shall include a Unit and such undivided interest in the Common Elements. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered once sold by Declarant without the consent of all the Owners of said Units and the Mortgagees of such Owners as expressed in an amended Declaration, except as provided in Sections 2.3 and 9.5.3.2. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner shall have a non-exclusive right to use the General Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners. Notwithstanding the transfer of the ownership of the Common Elements to the Owners as tenants in common, the Declarant shall reserve and hereby reserves unto itself and to the Association or its designated agents an easement over and onto the Common Elements for common driveway purposes, for drainage and encroachment purposes and for ingress to and egress from the Common Elements for the purpose of completing improvements thereon and/or for the performance of necessary repair work. Declarant further reserves unto itself and to the Association or its designated agents the right to establish easements, reservations, exceptions and exclusions consistent with the ownership of the Condominium Project and for the best interest of the Owners and the Association in order to serve the entire Condominium Project.

2.1.3. Limited Common Elements. The Limited Common Elements shall be identified herein or on the Map, as amended from time to time, and designated as appurtenant to a particular Unit or Units. The rights of any individual Owner in the Limited Common Elements shall consist of (1) an exclusive easement to use for vehicle parking purposes, the parking space or spaces specifically originally assigned or reassigned by Declarant or the Association to the Owner as being appurtenant to his Unit, if any; (2) an exclusive easement to use the utilities and lines described in Section 1.15.3 and the areas described in Section 1.15.4; (3) an exclusive easement for ingress and egress over and for the use and enjoyment of the exterior stairs and landing area adjacent and appurtenant to the Unit (provided, however, that such easement shall be shared with any other Unit to which such stairs and landing area are also adjacent and appurtenant), if any; (4) an exclusive easement to use a storage area, balcony or patios, if any, adjacent to and appurtenant to the unit as shown on the Condominium Plan; and (5) an exclusive easement to use such other areas and facilities as may be designated in this Declaration and on the Map, as same may be amended from time to time.

2.2. No Separate Conveyance of Undivided Interests. The foregoing interests and exclusive easements are hereby established and are to be conveyed only with the respective Units, and cannot be changed, except as herein set forth. Declarant and each Owner covenant and agree that the undivided interests in the Common Elements, the exclusive easements of the Limited Common Elements, and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest and exclusive easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

2.3. Partition Prohibited. The Common Elements shall remain undivided as set forth above so long as suitable for a condominium regime. Except as provided by the Texas Condominium Act, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby (but partition of title to a single Unit is prohibited). Notwithstanding the provisions of this Section 2.3, until all of the Units are conveyed by Declarant to a third party, Declarant has the right to:

2.3.1. physically combine the space within one Unit with the space within one or more adjoining Units, to redetermine the Common Interest of the Units so combined and to amend the Declaration and Map to include said changes;

2.3.2. physically combine part of or a combination of parts of the space within one Unit with part or parts of space within one or more adjoining Units, to redetermine the Common Interest of the Units so combined and to amend the Declaration and Map to include said changes;

2.3.3. partition or subdivide any Unit owned by Declarant into two or more Units, Common Elements, or a combination of Units and Common elements, to redetermine the Common Interest of those Units so partitioned or subdivided, and, if applicable, of all other Units, and to amend the Declaration and Map to include said changes; and

2.3.4. modify or remodel one or more Units into larger or smaller Units or any combination thereof, to construct, alter, relocate or remove any walls or do any other work which may be necessary to complete such modification or remodeling, to redetermine the Common Interest of the Units altered, if any, and to amend the Declaration to include said changes.

ARTICLE III.
ASSOCIATION, ADMINISTRATION,
MEMBERSHIP AND VOTING RIGHTS

3.1. Association to Manage Common Elements. The management of the Common Elements shall be vested in the Association in accordance with the terms of this Declaration and the Bylaws. A copy of the Bylaws which have been duly adopted by the Board of Directors of the Association is attached hereto as Exhibit "C" and incorporated herein by reference for all purposes; and all Owners of the Units and all holders of liens thereon shall be bound thereby. The Owners of all of the Units covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles and the Bylaws, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project or the Association, as same may be amended from time to time.

3.2. Membership. Any Person, upon becoming the Owner of a Unit, shall automatically be a Member of the Association, and shall remain a Member thereof in accordance with the Articles and the Bylaws until such time as his ownership of said Unit ceases for any reason, at which time his membership in the Association shall automatically cease.

3.3. Transferred Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books.

3.4. Voting Rights. The Owner or Owners of each Unit shall be entitled to one (1) vote, the value of which shall equal the Common Interest assigned to said Owner's or Owners' Unit as set forth in Exhibit "B-32" hereto.

3.5. Board of Directors. The affairs of the Association shall be managed by a Board of Directors which has been established and which shall conduct regular and special meetings according to the provisions of the Bylaws.

ARTICLE IV.
MAINTENANCE AND ASSESSMENTS

4.1. Declarant Establishing Fund. To insure that the Owners' Association will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, the Declarant will establish a working capital fund at least equal to two (2) months estimated common charges for each Unit. Any amounts paid into this fund should not be considered as advance payments of regular assessments. Each Unit's share of the working capital fund should be collected at the time the sale of the Unit is closed and then should be transferred to the Owners' Association for deposit to a segregated fund. Within sixty (60) days after closing has been held for the first Unit, the Declarant will pay each unsold Unit's share of the working

capital fund to the Owners' Association. The Declarant will then reimburse itself for this payment from the funds collected at closing when the unsold Units are sold.

4.2. Personal Obligation of Assessments. Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed, as a part of the purchase money consideration for such deed and conveyance, to covenant and agree to pay to the Association: (1) regular monthly Assessments or charges, and (2) special Assessments for capital improvements and unexpected expenses, such Assessments to be established and collected as provided herein, in the Bylaws and in the Rules and Regulations of the Association. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

4.3. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project for the improvement and maintenance of the Common Elements for the common good of the Project. The Board may use said Assessments for said purposes, including, without limitation, providing for the enforcement of the provisions of this Declaration, the Bylaws and the Rules and Regulations promulgated thereunder. The decision of the Board with respect thereto shall be final so long as made in good faith. Annual Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Elements. The Limited Common Elements shall be maintained as General Common Elements, and Owners having exclusive use thereof shall not be subject to any special charges or Assessments for the repair or maintenance thereof except as otherwise provided in the Bylaws and herein, including, but not limited to, Section 5.2 hereof.

4.4. Regular Monthly Assessments and Creation of Lien. All Owners shall be obligated to pay the Assessments imposed by the Board of Directors of the Association. The total amount of the estimated funds required from Assessments to operate the Project shall be set forth in a budget adopted by the Board of Directors and shall be assessed against each Owner in proportion to the Common Interest of such Owner as set forth herein, said figure to be divided by twelve (12) to determine the regular monthly Assessment; provided however that said Assessments based on said Common Interests may be rounded off to the nearest dollar figure and shall be secured by a lien against said Unit, subject to the provisions hereof. Declarant hereby reserves and assigns to the Association, without recourse, a vendor's lien against each Unit to secure the payment of any regular or special Assessment which may be levied pursuant to the terms hereof, and the expenses incurred in connection with the enforcement thereof, including, without limitation, interest at the rate provided in Section 4.6, costs and reasonable attorneys' fees. Said liens may be enforced by appropriate judicial proceedings, and the amounts secured thereby shall be the obligation of and chargeable to the Owner in default. Any such lien shall be and is subordinate and inferior only to the following: (i) assessments, liens and charges in favor of the State of Texas and any political subdivision thereof for taxes past due and unpaid on such Unit; and (ii) amounts due under any first lien Mortgage instruments duly recorded prior to the recordation of any lien assessment as provided in Section 4.6.

4.5. Special Assessments. In addition to the regular monthly Assessments authorized above, the Board may levy, in any year, one or more Special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the Common Elements, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expense or other action or undertaking normally covered by a regular Assessment (and, where necessary, for taxes assessed against the Common Elements or the Project as a whole). Said Special Assessments shall be assessed against each Owner in proportion to the Common Interest of such Owner as set forth herein. Special Assessments may also be levied against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration and the Bylaws including actual attorneys' fees and costs. Said Special Assessments may be subject to such limitations as are provided in the Bylaws.

4.6. Assessment Lien. All sums assessed but unpaid for the share of Assessments chargeable to any Unit, including interest thereon at the maximum rate permitted by law per annum from the date such Assessments are due until said Assessments are paid, subject to the provisions hereof limiting the interest contracted for, charged or received to the maximum permitted by applicable law, shall constitute a lien on such Unit superior to all other liens and encumbrances, except as provided in Section 4.4. The Board of Directors or a managing agent appointed by the Board ("Managing Agent") may (but shall not be required to) prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed by one of the members of the Board of Directors or by one of the officers of the Association or by a representative of the Managing Agent and may be recorded in the office of the County Clerk of Dallas County, Texas. Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association in like manner as a mortgage on real property subsequent to the recording of a notice provided for above. In any such proceeding, the Owner shall be required to pay the costs, expenses and attorneys' fees incurred in connection with the filing of the lien, and in the event of any foreclosure proceeding, all additional costs, expenses and attorneys' fees incurred in connection with any such foreclosure proceeding. The Owner of the Unit being foreclosed shall be required to pay to the Association the monthly Assessment for the Unit during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to bid on the Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any Mortgagee holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Assessments owing with respect to such Unit, but such payment shall not be deemed a waiver of the Owner's default by either the Association or such Mortgagee.

The amount of the Common Expenses assessed against each 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.

Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil Statutes, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also temporarily suspend the Association membership rights of any Owner who is in default in payment of any Assessment in accordance with the Bylaws.

4.7. Date of Commencement of Assessment; Due Dates. The regular monthly Assessments provided for herein shall commence as to all Units in the Project on the first day of the month following the conveyance by deed of the first Unit in the Project. Thereafter, due dates of regular monthly Assessments shall be the first day of each and every subsequent calendar month. No notice of such Assessments or the due dates thereof shall be required other than an annual notice setting forth the amount of the regular monthly Assessments. The due date of any special Assessment shall be the due date specified by the Association in the notice of such special Assessment delivered by the Association to each Owner; provided, however, such due date shall in no event be less than thirty (30) days subsequent to the date of such notice.

4.8. Transfer of Unit by Sale or Foreclosure. Sale or transfer of any Unit shall not affect the Assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a Mortgage, or by deed or other transfer in lieu thereof, shall extinguish the lien of such Assessments as to the payments which become due prior to such sale or transfer (except for Assessments which became due prior to the recordation of such Mortgage). No such sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof. When any Mortgagee of a Mortgage obtains title to a Unit as a result of foreclosure of such Mortgage, or by deed or other conveyance in lieu thereof, such Mortgagee shall not be liable for the unpaid dues or charges of the Association chargeable to such Unit which accrued subsequent to the recordation of such Mortgage and prior to the acquisition of title to such Unit by such Mortgagee. Such unpaid dues or charges shall be deemed to be Common Expenses collectible from all of the Units including the Unit acquired by such Mortgagee. In a voluntary conveyance of a Unit (other than a deed or conveyance to a Mortgagee in lieu of foreclosure), the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee, upon payment to the Association of a reasonable fee not to exceed Twenty-Five and no/100 Dollars (\$25.00) and upon written request, shall be entitled to a statement from the Association, setting forth the amount of any unpaid Assessments then due and owing to the Association with respect to the Unit being purchased, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement and applicable to a period of time prior to the date of such statement; provided, however, the grantee shall be liable for any such Assessments becoming due after the date of any such statement.

4.9. Separate Taxation. Each Unit, together with its Common Interest, shall be deemed to be a separate and distinct entity for the purposes of the assessment and collection of taxes, assessments and other charges of this state, or of any political subdivision, special improvement district or any other taxing or assessing authority. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit shall divest or in any way affect title to any other Unit. In the event that such taxes or assessments for any year are not separately assessed to each Unit but rather are assessed on the Project as a whole, then each Owner shall pay his proportionate share thereof in accordance with his Common Interest and, in said event, such taxes or assessments shall be a Common Expense. If necessary, a special Assessment or Assessments may be levied against the Units in an amount equal to said taxes, to be paid thirty (30) days prior to the due date thereof.

ARTICLE V.
DUTIES AND POWERS OF THE ASSOCIATION

5.1. Duties and Powers. In addition to the duties and powers enumerated in the Bylaws and the Articles, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

5.1.1. Maintain, repair, replace, restore, operate and manage all of the Common Elements and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association in good condition. This obligation shall not extend to any portion or facility of the Common Elements required to be maintained by an individual Owner under this Declaration (specifically including, but not limited to, Sections 5.2, 5.3 and 9.7) or the Bylaws.

5.1.2. Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement and prosecution of actions.

5.1.3. Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of, and protecting the interests of, the Association and its Members.

5.1.4. Grant and reserve easements where necessary or desirable for utilities and utility facilities over the Common Elements and Units to serve the Common Elements and the Units and amend the Map to show same.

5.1.5. Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the

Association, subject to the Bylaws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over or interest in the Project, specifically including, but not limited to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not terminate professional management of the Project and assume self management thereof without the prior written approval of all Institutional Lenders (based upon one (1) vote for each Mortgage owned).

5.1.6. Keep or cause to be kept records with detailed accounts of the income, receipts and expenditures affecting the Project and its administration, specifying the maintenance and repair expenses with regard to the Common Elements and any other expenses incurred by or on behalf of the Project or Association. The records so kept shall be available for inspection by all Owners and Mortgagees of Units during regular business hours of the Association that shall be set and announced for general knowledge. All records shall be kept in accordance with generally accepted accounting principles and shall be audited at least once a year by an independent auditor. Copies of the auditor's reports shall be made available to all Owners and Mortgagees upon written request and the payment of the reasonable reproduction costs of such report as established by the Board or Managing Agent within ninety (90) days following the end of any fiscal year of the Association.

5.1.7. Adopt reasonable rules not inconsistent with this Declaration, the Articles, or the Bylaws relating to the use of the Common Elements and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners.

5.2. Maintenance of Project by Association. The Association shall provide maintenance of the Project as provided in the Bylaws. The responsibility of the Association for maintenance and repair shall not extend to the cost and expense of repairs or replacements arising out of or caused by the willful or negligent act or neglect of any Owner, or his guests, tenants or invitees. The cost and expense of repair or replacement of a Unit exterior or of any portion of the Common Elements resulting from such excluded items shall be the responsibility of such Owner who (or whose guests, tenants or invitees) neglects or willfully damages such excluded items. The Association may cause such repairs and replacements to be made at such Owner's sole cost and expense, and if said Owner shall fail to pay for such repairs or replacements upon demand, the cost thereof (plus interest from the date of payment(s) at the maximum legal rate) shall be added to the Assessments chargeable to such Unit and shall be payable to the Association by the Owner of such Unit upon demand.

5.3. Association Easements and Access to Units. For the purpose of performing the maintenance, repair or replacement authorized by this Article or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have a non-exclusive easement over and onto all portions of the Common Elements, and shall also have the right, after reasonable notice to the Owner, and at reasonable hours, to enter any Unit for such purposes and to enter any Unit without notice at any time in the event of an emergency. Should any Owner change any lock on any entrance to his Unit, such Owner shall immediately provide to the Board a key to the new lock. Damage to the interior or any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall be a Common Expense of all of the Owners; provided, however, that if such damage is the result of the neglect, misuse or negligence of an Owner, then such Owner shall be responsible and liable for all such damage. All damaged improvements shall be restored to substantially the same condition of such improvements prior to damage. All maintenance, repairs and replacements as to the General Common Elements, whether located under or outside of Units (unless required to be maintained by an individual Owner under this Declaration or necessitated by the neglect, negligence or misuse by an Owner or his guests, tenants or invitees, in which case such expense shall be charged to such Owner) shall be the Common Expenses of all the Owners.

ARTICLE VI. UTILITIES

6.1. Owner's Rights and Duties. The rights and duties of the Owners of Units within the Project with respect to utilities shall be as follows:

6.1.1. Each Owner shall pay for his own utilities which are separately metered and billed to each Unit by the respective utility companies or submetered and billed to each Unit by the Association. Any such utility expenses billed to each Unit by the Association shall be deemed to be special Assessments hereunder and shall be secured by the lien reserved in Section 4.3. Utility expenses which are not metered or submetered and separately billed shall be part of the Common Expenses, and each Owner shall pay his pro-rata share thereof as in the case of other Common Expenses.

6.1.2. Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air-conditioning conduits, ducts, or flues (such items being hereinafter collectively called the "connections") are located or installed within the Project, which connections, or any portion thereof, lie in or upon more than one Unit, Declarant reserves for the use and benefit of the Association the right and an easement to the full extent reasonably necessary therefor, to enter upon the Units or to have the utility companies enter upon the Units in or upon which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when reasonably necessary; provided, however, the exercise of such

easement rights shall be in a manner reasonably calculated to cause as minimal interference with the continued use and occupancy of the Units so affected by the Owners thereof, while still adequately serving the purposes for which they are granted.

6.1.3. Whenever connections are located or installed within the Project, which connections serve more than one Unit, the Owner of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Unit.

6.2. Easement for Utilities and Maintenance. Easements over and under the Property for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, and telephone lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as are shown on the Map, and as may be hereafter required to serve the Property, are hereby reserved by Declarant for the use and benefit of the Association, together with the right to grant and transfer the same.

6.3. Association's Duties. The Association shall maintain all utility installations located in the Common Elements except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Project except those metered or submetered and charged separately to the Units.

ARTICLE VII. USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project and each Unit therein is subject to the following:

7.1. Use of Individual Units. No Unit shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein; provided, however, that Declarant may use any Unit or Units in the Project owned by Declarant for a model home site or sites and display and sales office until the last Unit in the entire Project is sold. No more than three (3) individuals may occupy a two (2) bedroom Unit; and no more than two (2) individuals may occupy a one (1) bedroom Unit; provided, however, that in determining the number of bedrooms in a Unit, a den, if any, shall be counted as a bedroom.

7.2. Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Unit or in any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with, the quiet enjoyment of each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or cause a refusal to renew the same, or which will impair the structural integrity of any Building.

7.3. Vehicle Restrictions. No trailer, camper, mobile home, recreational vehicle, commercial vehicle, truck (other than standard size pickup truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project, other than temporarily (for purposes of loading and unloading of passengers or personal property), unless in an area specifically designated for such purpose by the Board. Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No off-road unlicensed motor vehicles shall be maintained or operated upon the Project, except as may be reasonably necessary to the execution of the rights or duties of the Association under this Declaration.

7.4. Signs. Declarant may place signs in or around the Common Elements and use the Common Elements for sales purposes until the last Unit in the entire Project is sold. Owners other than Declarant, however, are prohibited from placing "for sale," "for rent" or any other signs in or around the Common Elements or displaying signs to the public view on any Unit or any portion of the Project.

7.5. Animals. No animals or birds of any kind shall be raised, bred, or kept in any Unit, or any portion of the Project except as permitted in the Bylaws or in the rules and regulations adopted by the Board and published from time to time.

7.6. Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Project and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers in accordance with the Bylaws and the rules and regulations adopted by the Board and published from time to time. All equipment, garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view of other Units, streets, and the Common Elements.

7.7. Radio and Television Antennas. No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, shall be permitted, and no Owner shall be permitted to construct, use, or operate his own external radio, television antenna, or other electronic antenna without the prior written consent of the Board. No Citizens Band transmitter or other transmission device shall be permitted on the Project without the prior written consent of the Board.

7.8. Right to Lease. The respective Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days, nor shall less than an entire Unit be rented or leased. Subject to the foregoing restrictions and to those of Section 7.9 hereof, the Owners of the respective Units shall have the absolute right to lease the Units provided that the lease is in writing and is made subject to the covenants, conditions, easements, restrictions, limitations, liens for Common Expenses and uses contained in this Declaration and the Bylaws, and any rules and regulations adopted by the Board and

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published from time to time. Notwithstanding any of the foregoing, the right of Declarant to rent or lease Units until their initial transfer to any third party or parties is hereby specifically reserved, provided, however, any lease entered into by Declarant shall be subject to the terms and conditions of this Section 7.8.

7.9. Mortgaging a Unit - Priority. Any Owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first Mortgage shall be one which has first and paramount priority under applicable law. An Owner may create and grant a second lien mortgage or deed of trust against his Unit on the following conditions: (1) That any such second lien mortgage or deed of trust shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, easements, obligations and liens for Common Expenses and other payments created by this Declaration and by the Bylaws; and (2) That the mortgagee under any second lien mortgage or deed of trust shall release by written recordable instrument, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished to the Association by the mortgagee under any second lien mortgage or deed of trust promptly following written request therefor by the Association.

7.10. Power Equipment and Car Maintenance. No power equipment, work shops, or car maintenance of any nature whatsoever shall be permitted on the Project except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

7.11. Liability of Owners for Damage to Common Elements. The Owner of each Unit shall be liable to the Association for all damages to the Common Elements or improvements thereon caused by neglect, misuse or negligence of such Owner or any tenant or other occupant of his Unit, guest or invitee.

7.12. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article VII or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Unit in the Project in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

7.13. Right of Ingress and Egress. The Unit Owner shall have an unrestricted right of ingress and egress to his or her Unit. This is a perpetual right and shall pass only with ownership transfer.

ARTICLE VIII.
ARCHITECTURAL CONTROL

8.1. Prohibition of Alteration and Improvement. Subject to the exemption of Declarant under Section 9.10 below, no building, fence, wall, obstruction, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement, or structure of any kind shall be commenced, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto (save and except for repainting and redecorating of the interior of a Unit by an Owner) until the same has been approved in writing by the Board or by an Architectural Control Committee (the "Committee") appointed by the Board and/or Declarant as provided in this Article. Notwithstanding anything herein to the contrary, the Association may not alter or destroy a unit or limited common element without the consent of all Owners affected and the first lien mortgagees of all affected Owners.

8.2. Plans and Approval. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations, shall be submitted to the Board or Committee for approval as to such matters as quality of workmanship and design and harmony of structural and external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to rebuild in accordance with Declarant's original plans and specifications, or to rebuild in accordance with plans and specifications previously approved by the Board or Committee. No landscaping of patios or yards visible from the street, from other Units or from the Common Elements shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, design and location of the proposed materials shall have been submitted to and approved in writing by the Board or Committee. The Board or Committee shall respond in writing within sixty (60) days from the date it receives said requests for approval of plans and specifications required under this Section 8.2. If the Board or Committee does not respond in writing within said sixty (60) day period, the Board or Committee shall be deemed to have approved said request.

8.3. Architectural Control Committee. The number, appointment and term of members of the Committee shall be as provided in the Bylaws, subject to the following limitations:

8.3.1. If a Committee is appointed, there shall not be less than three (3) nor more than five (5) members of the Committee.

8.3.2. Declarant may appoint all of the original members of the Committee and all replacements until _____, 19____, or the date upon which there has occurred the Conveyance by Declarant of seventy-five percent (75%) of the Units, or sooner at the option of Declarant. Thereafter, the Board shall have the power to appoint all of the members of the Committee. Committee members appointed by the Declarant need not be Members of the Association. Committee members appointed by the Board shall, however, be from the membership of the Association.

ARTICLE IX.
GENERAL PROVISIONS

9.1. Enforcement. The Association, any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court; provided, however, that an individual Owner shall have no right to enforce the collection of any Assessment levied against any other Owner under Article IV above. Failure by any such Person to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

9.2. Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

9.3. Encroachment and Protrusion Easements. Each Unit within the Project is hereby declared to have an easement over all adjoining Units and the Common Elements for the purpose of accommodating any encroachment and/or protrusion due to engineering errors, errors in original construction, settlement or shifting of the Building, or any other cause. There shall be valid easements for the maintenance of said encroachments and/or protrusions as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, protrusion, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment or protrusion be created in favor of an Owner or Owners if said encroachment or protrusion occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments and/or protrusions over adjoining Units of Common Elements shall be permitted and that there shall be a valid easement for the maintenance of said encroachments and/or protrusions so long as they shall exist. Such encroachments or protrusions shall not be considered to be encumbrances either on the Common Elements or on a Unit for purposes of marketability of title or otherwise.

9.4. Termination of Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner or his agent, contractor or subcontractor shall be the basis for the filing of a lien against either the Common Elements or the Unit of any other Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Unit to the Board or Managing Agent in the case of emergency repairs. Each Owner shall indemnify and hold harmless each of the other Owners from and against any and all liability arising from any such claims or liens against the Units of any other Owners or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the indemnifying Owner's Unit at such indemnifying

Owner's request. Labor performed or materials furnished for the General Common Elements, if duly authorized by the Managing Agent or the Board in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each Unit in the Project.

9.5. Mortgage Protection Clauses.

9.5.1. Rights of Mortgagees. No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any lien Mortgage (meaning a Mortgage with first priority over any other mortgage) on any Unit or on the Project made in good faith and for value, but all effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, unless otherwise provided herein.

9.5.2. Notice to Lenders. All Institutional Lenders shall be entitled to receive the following notices in writing from the Association:

9.5.2.1. Notice of any proposed change in the Project Documents, which notice shall be given thirty (30) days prior to the effective date of such change;

9.5.2.2. Notice of default by the Owner or grantor of any Mortgage on a Unit (the beneficial interest in which is held by said Institutional Lender) in the performance of such Owner's or grantor's obligations under the project Documents, which default is not cured within sixty (60) days.

9.5.2.3. Timely written notice of any damage or destruction to any individual Unit subject to a Mortgage (the beneficial interest in which is held by said Institutional Lender), which damage affects any material portion of the Project or any Unit estate on which there is a first mortgage held, insured or guaranteed by such eligible mortgage holder, insurer, or guarantor as applicable; and

9.5.2.4. Timely written notice of any loss to or taking of any portion of the Common Elements or facilities or improvements thereon, which loss or taking affects any material portion of the Project or any Unit estate on which there is a first mortgage held, insured or guaranteed by such eligible mortgage holder, insurer, or guarantor as applicable.

9.5.3. Changes Requiring Lender Approval. Without the prior written approval of at least sixty seven percent (67%) of all the Institutional Lenders (based upon one (1) vote for each Mortgage owned) or sixty-six and two-thirds percent (66-2/3%) of the undivided interest in the Common Elements held by the Owners other than

Declarant (except to the extent a higher percentage of approval may be expressly required elsewhere herein or by applicable law), the Association shall not be entitled to:

9.5.3.1. By act or omission, seek to abandon or terminate the Condominium Project except for abandonment or termination of the Project provided by law, in case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain;

9.5.3.2. 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 or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Elements; provided, however, that nothing herein shall prevent Declarant from redetermining and reallocating between Units owned by Declarant the pro rata share of ownership in the Common Elements of such Units owned by Declarant which Declarant combines, partitions or subdivides prior to sale of such Unit to a third party;

9.5.3.3. Partition or subdivide any Unit, except as provided in Section 2.3, provided that nothing contained herein or in Section 2.3 shall prevent Declarant from combining, partitioning or subdividing Units owned by Declarant;

9.5.3.4. 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 by the Project shall not be deemed a transfer within the meaning of this clause);

9.5.3.5. Use hazard insurance proceeds for losses to any property on the project (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction thereof, except as provided by applicable statute in case of substantial loss or damage to the Units and/or the Common Elements.

9.5.4. Mortgage Priority. Notwithstanding any language contained in this Declaration or the other Project Documents to the contrary, no Owner or other party shall have priority over any rights of the Mortgagee of any Unit pursuant to its Mortgage in the case of a distribution to the Owner of such Unit of insurance proceeds or condemnation awards for losses to or taking of all or a portion of such Unit and/or Common Elements. Institutional Lenders shall have the right to examine the books and records of the Association at all reasonable times during regular business hours of the Association.

9.5.5. Compliance with FNMA and FHLMC Regulations. The Declarant intends that the Project shall comply with all requirements of the Federal National Mortgage Association ("FNMA") and/or the Federal Home Loan Mortgage Corporation ("FHLMC") pertaining to the purchase by FNMA and/or FHLMC of conventional home loans. Declarant and all Owners therefore agree that, notwithstanding anything to the contrary contained herein, in the event the Project or any of the Project Documents do not comply with the FNMA and/or FHLMC requirements, the Board shall have the power (on behalf of the Association and each and every Owner) to enter into any agreement with FNMA and/or FHLMC (or their designees) or the Mortgagees of the Units reasonably required by FNMA and/or FHLMC or the Mortgagees to allow the Project to comply with such requirements.

9.5.6. Taxes, Assessments and Charges Which May Become Liens. All taxes, assessments and charges which may become liens prior to any first lien Mortgage under local law shall relate only to the individual Units and not the the Project as a whole.

9.6. Revocation or Amendment to Declaration. This Declaration shall not be revoked unless all of the Owners and sixty seven percent (67%) of the holders of any recorded first lien Mortgage covering or affecting any or all of the Units consent and agree to such revocation by instrument(s) duly recorded. Except as set forth in Section 9.5.5, this Declaration shall not be amended unless the Owners representing an aggregate ownership interest of at least sixty seven percent (67%) of the Common Elements and fifty-one percent (51%) of the holders of any recorded first lien Mortgage covering or affecting any or all Units consent and agree to such amendment by instrument(s) duly recorded; provided, however, that the percentage of the undivided interest in the Common Elements appurtenant to each Unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the Unit Owners expressed in an amended Declaration duly recorded (subject only to the rights of Declarant to unilaterally change such percentage of undivided interest as set forth in Sections 2.3 and 9.5.3.2), and provided, further that revocation of this Declaration shall always require the consent of all of the Owners. Notwithstanding the foregoing, before the first annual meeting of the Association, Declarant may, with the written consent of any Institutional Lender of any Unit which would be affected (but without the consent of any Owner) amend this Declaration, Map, Bylaws and any other Exhibits attached hereto, which amendments may include by way of example, but not be limited to those made pursuant to Sections 1.15, 1.16 and 2.3.

9.7. Owner's Right and Obligation to Maintain and Repair. Except for those portions of the Project which the Association is required to maintain and repair as provided herein and in the Bylaws, each Unit Owner shall, at his sole cost and expense, maintain and repair his Unit and any Limited Common Elements appurtenant to his Unit, keeping the same in good condition. Additionally, each Owner shall, at his sole cost and expense, maintain, repair and replace as necessary any separate air conditioning and heating units which service only his Unit. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner

surfaces of the walls, ceilings, floors, windows and doors bounding his Unit. In the event an Owner fails to maintain his Unit as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify such Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event such Owner fails to complete such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner and, if necessary, create a lien against the Unit for the amount thereof.

9.8. Insurance; Damage or Destruction.

9.8.1. Association Liability Insurance. The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant and the agents and employees of each and the Owners and their respective family members, guest and invitees against any liability incident to the ownership or use of the Common Elements, commercial spaces, if any, and public ways, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured, and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. The scope of the coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location, and use. Coverage shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage.

9.8.2. Master Hazard Insurance. Additionally, the Association shall obtain and continue in effect a master or blanket policy of multi-peril insurance on the Project, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of all improvements on the Project. If there is a steam boiler in operation in connection with any Unit, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing minimum coverage in an amount not less than Fifty Thousand Dollars (\$50,000.00) per accident per location. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on all Units in the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The master policy of multi-peril insurance shall contain extended coverage and replacement costs endorsements, if available, and may also contain

vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the improvements on the Project in the event of destruction and a decision not to rebuild pursuant to this Declaration. Such policies shall be in form and amount as may be determined by the Board (provided that such policies must be acceptable to the Federal Home Loan Mortgage Corporation and/or the Federal National Mortgage Association), shall name as insured the Association, the Owners and Declarant (so long as Declarant is an Owner of any Units), and all Mortgages as their respective interest may appear, and shall provide that any proceeds be paid to the Association for the use and benefit of the Owners and Mortgagees as their interest may appear. Such policy shall not be required to insure the personal property or customized items within any individual Units, which shall be and remain the responsibility and risk of the Owners.

9.8.3. Additional Association Insurance. The Association may purchase such other insurance as it may deem necessary, without limitation plate-glass insurance, worker's compensation, directors liability, and errors and omissions insurance, and the Association shall purchase fidelity coverage against dishonest acts by any directors, managers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity bond insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

9.8.4. Choice of Carriers; Insurance Premiums. The insurance policies required under this Section 9.8 shall be acquired from carriers meeting the qualifications of the Federal Home Loan Mortgage Corporation and/or the Federal National Mortgage Association. Insurance premiums shall be a Common Expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Owner to obtain additional individual insurance.

9.8.5. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project, in whole or in part, upon its destruction or repair.

Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place

and stand for the purpose of dealing with said Project upon its destruction as is hereinafter provided. As attorney-in-fact, the Association, by and through its President or any Vice President and Secretary or any Assistant Secretary, 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 an Owner which is necessary and appropriate to exercise the powers herein granted. Any repair, reconstruction or replacement made of the improvement(s) shall be to substantially the same condition existing prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purposes of repair, restoration or replacement unless the Owners agree not to rebuild in accordance with the provisions hereinafter set forth. The Association shall have full authority, right and power, as attorney-in-fact, to cause any repair and restoration of the improvement(s) permitted or required hereunder.

Without limitation on the generality of the foregoing, the Association as said attorney-in-fact shall have the full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to settle and compromise any and all claims under said insurance policies, to collect proceeds and to distribute the same to the Association, the Owners and their respective Mortgagees (subject to the provisions hereof) as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Owners, the Association and the Project as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit or for the liability of any Owner for occurrences therein not caused by or in connection with the Association's operation, maintenance or use of the project.

9.8.6. Reconstruction or Repair of Project. In the event of fire, casualty or other disaster involving substantial damage to the Project, within ten (10) days of receipt of a determination of the amount of insurance proceeds available to the Association, the Association shall cause notice to be given of a special meeting of Members to be held not less than twenty (20) nor more than thirty (30) days from the giving of such notice. Such notice shall specify the amount of insurance proceeds available, the estimated cost of restoration and any other data deemed pertinent to the determination called for by this Section 9.8.6.

9.8.6.1. Sufficient Proceeds. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Project, shall, subject to the provisions of Sections 9.8.6.3 and 9.8.6.4 below, be applied to such reconstruction. Reconstruction of the Project, as used in this Section 9.8.6 means restoring the Project to substantially the same condition in which it existed immediately prior to the fire, casualty or other disaster, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Such reconstruction shall be caused to be accomplished by the Association or its duly authorized agents.

9.8.6.2. Insufficient Proceeds. If the insurance proceeds are insufficient to reconstruct the Project, damage to or destruction thereof shall, subject to the provisions of Sections 9.8.6.3 and 9.8.6.4 below, be promptly caused to be repaired and restored by the Association or its duly authorized agents, using proceeds of insurance, if any, on the Project for that purpose, and the Owners shall be liable for the special Assessment or Assessments for any deficiency as hereinafter provided.

9.8.6.3. Less than Two-thirds Destruction. If less than two-thirds (2/3) of the Project (as determined by the vote or written consent of Members owning at least fifty-one percent (51%) of the Common Interest in the exercise of their sole discretion) is destroyed or substantially damaged by fire or any other disaster, then the Project shall be rebuilt or repaired, unless the Members of the Association by unanimous vote or written consent, and sixty-six and two-thirds percent (66-2/3%) of the Institutional Lenders (based upon one (1) vote for each Mortgage owned) by prior written approval elect not to repair such damage.

9.8.6.4. Two-thirds or More Destruction. If two-thirds (2/3) or more of the Project (as determined by the vote or written consent of Members owning at least fifty-one percent (51%) of the Common Interest in the exercise of their sole discretion), is destroyed or substantially damaged by fire or any other disaster, and if the Members, by unanimous vote or written consent, do not voluntarily, within one hundred eighty (180) days after determination of the amount of the Association's insurance proceeds resulting from such destruction or damage, make provision for reconstruction (unless within such period the buy-out contemplated in this Section 9.8.6.4 is effected), the condominium regime shall be deemed to have been waived, and the Association shall take all action required under the Act to regroup and merge the filial estate with the principal property, whereupon:

(i) the Project shall be deemed to be owned in common by the Owners;

(ii) the undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Elements;

(iii) any liens on each Unit and that certain portion of the Common Elements appurtenant thereto shall be deemed to be transferred in accordance with their existing priorities to the undivided interest of the Owner of the affected Unit; and

(iv) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided among all the Owners and their mortgagees as their interests shall appear in a percentage equal to the Common Interest previously owned by each Owner.

Notwithstanding the foregoing provisions hereof, in the event of destruction or substantial damage to two-thirds (2/3) or more of the Project, sixty-six and two-thirds percent (66 2/3%) of the Institutional Lenders (based upon one (1) vote for each Mortgage owned) by written approval and the Owners may, by an affirmative vote of the Members owning at least three-fourths (3/4) of the undivided Common Interest, at a meeting of the Members duly called for such purpose, elect to sell or otherwise dispose of the Project. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

Notwithstanding the foregoing provisions hereof, in the event that two-thirds (2/3) or more of the Project has been damaged and unanimous vote has not been obtained for reconstruction at the meeting held in accordance with the provisions of the first paragraph of this Section 9.8.6.4, the Association may, by affirmative vote of the Members owning at least three-fourths (3/4) of the undivided Common Interest at a meeting of the Members duly called for such purpose, elect to purchase all the ownership interests in the Project of those Owners not

voting to rebuild. Such action will be binding upon the Association and all Owners, and it shall thereupon become the duty of the Association and every Owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect the sale and purchase. The purchase price for the ownership interest of each Owner so being purchased shall be payable to the Owner and the Owner's mortgagees as their interests shall appear and shall be an amount equal to the Owner's percentage interest in the Association's insurance proceeds plus an amount equal to the Owner's percentage interest in an amount equal to the then market value of the Project, considered as a whole, excluding such insurance proceeds and less the amount of any liens against the Project or any part thereof. In the event the parties are unable to agree upon the purchase price, the price shall be determined by appraisal as follows: The Association shall select one MAI designated appraiser to act for it; within thirty (30) days of the Association's appointment of an appraiser, the selling Owners shall appoint an MAI designated appraiser to act for them; forthwith the two appraisers acting together shall select a third independent MAI designated appraiser by mutual agreement; and the three appraisers by a vote of the majority of the group shall determine the purchase and sale price with respect to each Owner selling hereunder. All such purchases and sales shall be closed within sixty (60) days subsequent to the determination of the purchase and sale price as aforesaid, with the Association financing the same in accordance with Section 9.9. Within fifteen (15) days of the last such closing, the Association shall cause to be held a special meeting of Members for the purpose of securing approval of reconstruction.

9.8.7. Repair of Interior of Unit. Each Owner shall be responsible for the reconstruction, repair or replacement of that portion of the interior of his Unit which the Owner has installed, furnished or provided, including but not limited to, any floor coverings, wall coverings, window shades, draperies, furniture, furnishings, decorative light fixtures, or other improvements, betterments and additions to his Unit, and all appliances located therein irrespective of whether or not such appliances are "built-in" to the Unit, except the original built-in appliances. Each Owner shall also be responsible for the costs not otherwise covered by insurance carried by the Association of any reconstruction, repair or replacement of any portion of the Project necessitated by his negligence or misuse or the negligence or misuse by his family, guests, agents, servants, employees or contractors. In the event damage to all or any part of the interior of an Owner's Unit is covered by insurance held by the Association for the benefit of such

Owner, then such Owner shall begin reconstruction or repair of such damage upon receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof. In the event damage to all or any part of the interior of an Owner's Unit is not covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of his Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof.

9.8.8. Application of Insurance Proceeds. As soon as possible after the occurrence of a casualty which causes damage to any part of the Project for which the Association has insurance coverage (hereinafter referred to as the "Casualty"), the Association shall obtain reliable and detailed cost estimates of the following:

9.8.8.1. The cost of restoring all damage caused by the Casualty to the Common Elements (hereinafter referred to as the "Common Element Costs"); and

9.8.8.2. The cost of restoring that part of the damage caused by the Casualty to each Unit which is or would be covered by insurance held by the Association without regard to the policy limits of such insurance (hereinafter referred to as the "Unit Costs"). All insurance proceeds available to the Association with respect to the Casualty shall first be applied to the payment of the actual Common Element Costs and the balance thereof, if any, shall thereafter be applied to the payment of the actual Unit Costs. However, if such insurance proceeds are not sufficient to cover such estimated costs, then a special Assessment or Assessments shall be made against the Owners by the Association in the following manner:

(i) All Owners shall be assessed on the basis of their percentage interest in the Common Elements for the payment of the estimated Common Element Costs not otherwise paid for by insurance held by the Association.

(ii) Each Owner of a damaged Unit shall be assessed an amount equal to the difference between the actual portion of estimated Unit Costs attributable to his Unit less a sum calculated by multiplying the amount, if any, of the remaining insurance proceeds held by the Association with respect to the Casualty by a fraction, the numerator of which is the actual portion of the estimated Unit Costs attributable to his Unit and the denominator of which is the total of all of the estimated Unit Costs.

9.8.9. Condemnation. In the event of any taking of any Unit in the Project by eminent domain or sale or other transfer in lieu thereof, the Owner of such Unit, subject to the rights of the Mortgagee of such unit as prescribed in Section 9.5.4 hereinabove, shall be entitled to receive the award for such taking and after acceptance thereof, he and his Mortgagee shall be divested of all interest in the Project if such Owner shall vacate and abandon his Unit by virtue of such taking. If any repair or rebuilding of the remaining portions of the Project is required as a result of such taking, the remaining Owners shall determine by the affirmative vote or written consent of Owners owning a majority of the Common Interest owned by said remaining Owners, either to rebuild or repair the Project or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or shall be undertaken, the remaining portion of the Project shall be re-surveyed, and the Declaration and Master Deed shall be amended to reflect such taking and to proportionately readjust the percentages of ownership of the remaining Owners based upon a continuing total ownership of the Project of one hundred percent (100%). The Association shall send written notice to all Institutional Lenders (who have notified the Association in writing of their interest in a Unit or Units) having Mortgages on Units affected by condemnation proceedings or negotiations for sale in lieu of condemnation whenever the Association obtains knowledge of such proceedings or negotiations. No condemnation or sale in lieu thereof shall affect the lien priority of an Institutional Lender on the Unit on which it holds a Mortgage or on proceeds of condemnation of that Unit. In the event of a taking or acquisition of part or all of the Common Elements only by condemning authority, the award or proceeds of settlement shall be payable to the Homeowners' Association, or any trustee, for the use and benefit of the Unit estate owners and their mortgagees as their interests may appear.

9.8.10. Personal Liability Insurance. In addition to the master policies which the Association shall carry, the Board shall have the power to require each Owner, at his sole cost and expense, to carry personal liability insurance covering damage to property or injury to the person of others within the Project resulting from negligence of the Owner or his agents, tenants, guests or invitees, in an amount up to, and including, One Hundred Thousand Dollars (\$100,000.00) for each occurrence.

9.8.11. Waiver of Subrogation; Notice of Cancellation. All property and liability insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, officers, and directors, and any Members, their guests, agents and employees. All policies of hazard insurance must contain or have attached the standard mortgage clause commonly accepted by private institutional mortgage investors in the area in which the Units are located. All insurance carried by the Association shall contain a provision requiring the insurer to notify all insureds, including servicers on behalf of FHLMC and/or FNMA, named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

9.9. Financing of Purchase of Unit by Association. In the event the Association should acquire a Unit at foreclosure or pursuant to Section 9.8.6.4, such acquisition by the Association may be made from the working capital of the Association and common charges in the hands of the Association, or if such funds are insufficient, the Association may levy a special Assessment or Assessments against each Owner in proportion to his Common Interest, as a Common Expense, or the Association, in its discretion, may borrow money to finance the acquisition of such Unit; provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the interest in the Common Elements appurtenant thereto, so to be acquired by the Association.

9.10. Limitation of Restrictions on Declarant. Declarant is performing certain work in connection with the construction and development of the Property as a condominium regime. The completion of that work and the sale, rental, and other disposition of said Units is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

9.10.1. Prevent Declarant, its contractors, or subcontractors from doing on or to the Project or any Unit whatever is reasonably necessary or advisable in connection with the completion of the work; or

9.10.2. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

9.10.3. Prevent Declarant from conducting on any part of the Project its business of completing the work and of establishing a plan of Unit ownership and of disposing of said Project in Units by sale, lease or otherwise; or

9.10.4. Prevent Declarant from maintaining such sign or signs on any part of the Project as may be necessary for the sale, lease or disposition thereof.

So long as Declarant owns one or more of the Units established and described in this Declaration (and except as otherwise specifically provided herein), Declarant, its successors and assigns, shall be subject to the provisions of this Declaration.

9.11. Termination of Any Responsibility of Declarant. Declarant may at any time, or from time to time, sell, assign or transfer all or any part of its rights hereunder and/or its rights, title and interest in the Project to any Person or Persons who shall thereafter have such rights and powers of Declarant as are contained in the Project Documents and so transferred or

assigned. In the event Declarant shall convey all of its right, title and interest in and to the Project to any Person or Persons, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such Person or Persons shall be obligated to perform all such duties and obligations of the Declarant.

9.12. Owners' Compliance. Each Owner, tenant or occupant of a Unit and their guests and invitees shall comply with the provisions of the Project Documents and all lawful decisions and resolutions of the Association or its duly authorized representative, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action by the Association to recover sums due for damages (including costs and reasonable attorneys' fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

9.13. Legal Intent. It is the intent of Declarant, the Association and the Owners that the Project Documents be in strict compliance with applicable usury laws of the State of Texas. In furtherance thereof, said parties stipulate and agree that none of the terms and provisions contained in the Project Documents shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable laws of the State of Texas. The Owners or other parties now or hereafter becoming liable for payment of sums owing under the terms of the Project Documents shall never be liable for unearned interest on any of said sums and shall never be required to pay interest at a rate in excess of the maximum interest that may be lawfully charged under applicable laws of the State of Texas, and the provisions of this Section shall control over all other provisions of the Project Documents in conflict herewith. In the event that the Declarant, the Association or any of its designated agents shall collect monies which are deemed to constitute interest at a rate in excess of that permitted to be charged by applicable laws of the State of Texas, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to the Owner or other party so paying said monies upon such determination.

9.14. Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Declaration; Map; Articles; Bylaws; and Rules and Regulations of the Association.

9.15. Term of Declaration. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property and the Project, and shall inure to the benefit of and shall be enforceable by the Association, its respective legal representatives, successors-in-interest and permitted assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions, and restrictions shall automatically be extended for successive periods of ten (10) years, unless an instrument, signed by all of the then Owners and all of the Mortgagees, has been recorded, agreeing to change said covenants, conditions, and restrictions in whole or in part.

or eliminate the liability of the Association. Without limiting the generality of the foregoing, the Board may, on behalf of the Association, elect to be taxed under the Section 528 of the Internal Revenue Code or any successor statute conferring income tax benefits on homeowners associations. In connection therewith, the Board shall take such steps as are necessary to assure that the income and expenses of the Association for any taxable year shall meet the limitations and restrictions provided in said Section 528 of the Internal Revenue Code or any successor statute conferring benefits on homeowners associations as are in effect from time to time. Initially the Board shall comply with the following limitations and restrictions:

(i) At least sixty percent (60%) of the gross income of the Association for any taxable year shall consist solely of amounts received as membership dues, fees, or assessments from Unit Owners;

(ii) At least ninety percent (90%) of the expenditures of the Association for any taxable year shall be for the acquisition, construction, management, maintenance, and care of Association property;

(iii) No part of the net earnings of the Association shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of Association property and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private Member or individual. In addition, the Board shall take such steps as are necessary to insure that substantially all of the Units will be used as residences.

4. No Waiver of Rights. The omission or failure of the Association or any Owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provision of the Declaration, the Bylaws or the rules and regulations adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board of Directors or the Managing Agent shall have the right to enforce the same thereafter.

5. Election and Term of Office. At the first meeting of the Association the term of office of three (3) Directors shall be fixed at two (2) years; and the term of office of two (2) Directors shall be fixed at one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of two (2) years. The Directors shall hold office until their successors have been elected and hold their first meeting, except as is otherwise provided.

6. Vacancies. Vacancies in the Board of Directors caused by death, resignation or disqualification, i.e., by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the

majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

7. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of Owners, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting.

8. Organization Meeting. The first meeting of a newly elected Board of Directors following the annual meeting of the Owners shall be held within ten (10) days thereafter at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors but at least one such meeting shall be held during each calendar quarter. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least five (5) days prior to the day named for such meeting.

10. Special Meetings. Special meetings of the Board of Directors may be called by the President on five (5) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary or Assistant Secretary of the Association in like manner and on like notice on the written request of one or more Director.

11. Waiver of Notice. Before or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

12. Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

13. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association or of the Managing Agent, if any, handling or responsible for Association funds shall furnish fidelity bonds in accordance with the Declaration. The premiums on such shall be a Common Expense.

14. Compensation. No member of the Board of Directors shall receive any compensation for acting as such.

ARTICLE V.
FISCAL MANAGEMENT

The provision for fiscal management of the Project for and in behalf of all of the Owners as set forth in the Declaration shall be supplemented by the following provisions:

1. Accounts. The funds and expenditures of the Owners by and through the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be Common Expenses:

(a) Current expense, which shall include all funds and expenditures within the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves and to additional improvements.

(b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.

(c) Reserve for replacement (sinking fund) which shall include funds for repair or replacement required because of damage, wear or obsolescence.

2. Fiscal Year. The fiscal year for the Association shall be the calendar year.

ARTICLE VI.
OFFICERS

1. Designation. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors, and such assistant officers as the Board of Directors shall, from time to time, elect. Such officers need not be members of the Board of Directors, but each shall be either an Owner of a Unit or, if the Owner is a firm, partnership, corporation, association, or other legal entity,

the authorized representative of such entity, or the Declarant or his representative(s). The office of Secretary and Treasurer may be held by the same person.

2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office subject to the continuing approval of the Board.

3. Resignation and Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4. Vacancies. A vacancy in any office because of the death, resignation, removal, disqualification or otherwise of the officer previously filling such office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

5. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association or as may be established by the Board or by the Members of the Association at any regular or special meetings.

6. Vice-President. The Vice-President shall have all the powers and authority and perform all the functions and duties of the President, in the absence of the President, or his inability for any reason to exercise such powers and functions or perform such duties, and also perform any duties he is directed to perform by the President.

7. Secretary. The Secretary shall keep all the minutes of the meeting of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary and as is provided in the Declaration and the Bylaws.

The Secretary shall compile and keep up to date at the principal office of the Association a complete list of Members and their last known addresses as shown on the records of the Association. Such list shall also show opposite each Member's name the number or other appropriate designation of the Unit

owned by such Member, the undivided percentage interest in the Common Elements of such Member and a description of the percentage interest in the Common Elements of such member and a description of the Limited Common Elements assigned for exclusive use in connection with such Unit. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

8. Assistant Secretary. The Assistant Secretary, if any, shall have all the powers and authority to perform all the functions and duties of the Secretary in the absence of the Secretary or in the event of the Secretary's inability for any reason to exercise such powers and functions or to perform such duties, and also to perform any duties he is directed to perform by the Secretary.

9. Treasurer. The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. In the event a Managing Agent has the responsibility of collecting and disbursing funds, the Treasurer shall review the accounts of the Managing Agent within fifteen (15) days after the first of each month.

ARTICLE VII.
INDEMNIFICATION OF OFFICERS,
DIRECTORS AND MANAGING AGENT

1. Indemnification. The Association shall have the power to indemnify any Officer or Director thereof and the Declarant, who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (whether or not by or in the right of the Association) by reason of the fact that such person is or was a Director or Officer of the Association, against all loss, expenses (including but not limited to attorneys' fees and cost of the proceeding), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with or in defense of such action, suit or proceeding if such person acted in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Association; provided, that with respect to: (1) any criminal action or proceeding, such person had no reasonable cause to believe that his conduct was unlawful; or (2) any civil claim, issue or matter, such person shall not be guilty of gross negligence or willful misconduct in the performance of his duties to the Association. Termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that such person had reasonable cause to believe that his conduct was unlawful, that such person did not act in good faith or in a

manner which he reasonably believed to be in or not opposed to the best interests of the Association, or that such person is guilty of gross negligence or willful misconduct in the performance of his duties to the Association, all such matters being determined solely and exclusively for the purpose of indemnification as herein provided.

Indemnification under the preceding paragraph shall be made by the Association only as authorized in each specific case upon the determination that indemnification of such person is proper in the circumstances because he has met the applicable standards of conduct as set forth herein. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; or (2) if such a quorum is not obtainable by (a) independent legal counsel in a written opinion, or (b) the Members of the Association and no Member shall be disqualified from voting because he is or was party to any such action, suit or proceeding. Indemnification so determined may be paid, in part, before the termination of such action, suit or proceeding upon the receipt by the Association of an undertaking by or on behalf of the person claiming such indemnification to repay all sums so advanced if it is subsequently determined that he is not entitled thereto as provided in this Article.

To the extent that a Director or Officer of the Association has been successful on the merits or otherwise in the defense of any action, suit or proceeding, whether civil or criminal, such person shall be indemnified against such expenses (including costs and attorneys' fees) actually and reasonably incurred by him in connection therewith.

Indemnification provided herein shall be exclusive of any and all other rights and claims to which those indemnified may be entitled as against the Association, and every Director, Officer or employee thereof under any Bylaw, resolution, agreement or law and any request for payment hereunder shall be deemed a waiver of all such other rights, claims or demands as against the Association and each Director, Officer and employee thereof. The indemnification provided herein shall inure to the benefit of the heirs, executors, administrators and successors of any person entitled thereto under the provision of this Article.

The Association shall purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Association against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provision of this Article.

All liability, loss, damage, cost and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as Common Expenses; provided, however, that nothing in this Article VII contained shall be deemed to obligate the Association to indemnify any Member or Owner