

17331

DECLARATION OF CONDOMINIUM REGIME

MARKET MANOR SHOPPING CENTER

THE STATE OF TEXAS
COUNTY OF MIDLAND

KNOW ALL MEN BY THESE PRESENTS:

ARTICLE ONE-RECITALS

A. MIDLAND INDUSTRIAL PARTNERSHIP, a partnership organized under the laws of the State of Texas, and whose principal office and place of business is in the city of Odessa, Midland County, Texas, herein called the "Developer," owns all of the following land legally described as: Lot 1, Block 14, SCOTSDALE ADDITION, 10th SECTION, City of Midland, Midland County, Texas, to which reference is made for all purposes, herein after called the "land."

B. Developer has constructed upon said land a condominium project consisting of a building which contains fourteen individual commercial units, common areas, together with parking spaces, patios, walks, fences, walls and other improvements, structures, facilities, and appurtenances. This condominium project is designated and shall be known as "MARKET MANOR."

By this Declaration the developer intends to establish a plan under the Provisions of the Condominium Act of the State of Texas for the individual ownership of the area of space contained in each of the "commercial units" in said project, and the co-ownership by individuals and separate owners thereof, as tenants in common, of all of the remaining land and improvements, all more fully hereinafter set forth and described:

NOW THEREFORE, said Developer hereby declares that all of the said land and improvements constructed thereon, or to be constructed thereon, are held and shall be held, conveyed, hypothecated, encumbered, leased, sold, used, occupied and improved subject to the following divisions, covenants, restrictions, limitations, conditions, rights, privileges, obligations, liabilities, and uses, all of which said divisions, covenants, restrictions, limitations, conditions, rights, privileges, obligations, liabilities and uses shall run with the land and shall be binding on said Developer, its successors and assigns, and all subsequent owners, possessors or users of all or any part of said land and project, property and improvements, together with their respective grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE TWO DEFINITION OF TERMS

Terms herein used the following terms shall have the meanings defined:

A. "Developer" is defined to have the meaning as hereinabove set forth in Paragraph 1 of the Recitals, and/or any successors in interest.

B. "Land" is defined to have the meaning as hereinabove set forth and described in Paragraph 1 of the Recitals and in Exhibit "A" hereto attached.

C. "Condominium project" and "project" are defined to mean the buildings, structures and improvements (exclusive of the land) constructed or to be constructed on the land as set forth in the Plat annexed hereto as Exhibit "A," to which reference is made and which is incorporated herein as though set forth in full.

D. "Commercial space" (sometimes also called "Unit") is defined as the space or area contained within the perimeter wall of each of the commercial areas, together with the respective rooms and as described and identified by the number on the plat annexed hereto as Exhibit "A" or as from time to time dedicated hereto and incorporated herein by Developer by subsequent plats and exhibits, as hereinafter set forth, to all of which plats and exhibits reference is here made and which are incorporated herein as though set forth in full. The term "Commercial space" shall not include the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding each respective commercial space, nor the pipes, wires, conduits or other public utility lines running through said respective commercial spaces which are utilized for or serve more than one commercial space; however, "commercial space" shall include the walls and partitions, etc., which are contained in each respective commercial space and the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paints, wallpaper, etc. and appliances, fixtures, and improvements intended to exclusively serve such commercial space (such as individual bathroom, fixtures, plumbing, and appliances, individual lighting and electrical fixtures, and other separate items or chattels belonging exclusively to such commercial space) which may be removed, replaced, disposed or otherwise treated without affecting any other commercial space or the ownership, use and enjoyment thereof.

E. "Common areas and facilities" are defined to mean all of the land (including all land underlying the project or any part thereof) and project other than the commercial spaces, and including, without limitation on the foregoing by reason of specification, the following, if any: the land, yards and gardens, roofs, main and bearing walls, columns, slabs, stairways, staircases, lobbies, halls,

parking spaces, trash incinerators and, in general, all devices or installations existing for common use, storage spaces, entrances, exits or communications ways, community or commercial facilities, parking areas, trees, pavements, pipes, wires, conduits, other public utility lines, conduits and ducts, and all other elements of the project desirable or rationally of common use or necessary to the existence, upkeep and safety of the project.

F. "Limited common areas and facilities" are defined to mean all of the common areas or facilities set aside and allocated for the exclusive and restricted use of owners of particular commercial spaces as designated and shown on Plat annexed hereto as Exhibit "A" to which reference is made and which is incorporated herein by reference as though set forth in full. Unless context otherwise requires, the term "common areas and facilities" as used in this Declaration should be deemed to include the limited common areas and facilities.

G. "Commercial unit" is defined to mean each commercial space together with its proportionate undivided interest in the common areas and facilities and in the limited common areas and facilities.

H. "Owner" or "co-owner" is defined to mean a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns a commercial unit in the project, or any interest therein.

I. This "Declaration" or "Declaration of Condominium Regime" shall include as an entirety this instrument, all Exhibits annexed hereto, and all plats which are hereafter, from time to time, dedicated hereto and incorporated herein by Developer, whether or not otherwise herein referred to or incorporated herein by reference.

ARTICLE THREE - OWNERSHIP

Developer, in order to establish a plan of condominium ownership for the above described land and project, does hereby submit said land and project to the Condominium Act, Texas Property Code Annotated, Title 7, Chapter 91 (and its successors), and does hereby further DECLARE, COVENANT and AGREE that the said land and project are divided into the following separate freehold estates:

A. Commercial Spaces. Fourteen separate freehold estates consisting of those commercial spaces set forth and described on the Exhibits annexed hereto, to which reference is made and which is incorporated herein as though set forth in full. Provided, however, in order to achieve flexibility in the construction or adaption

of commercial spaces to the individual tastes of Owners, Developer reserves and shall have the right from time to time to change the size, shape, interior or exterior walls, and dimensions of any of the commercial spaces prior to the original sale thereof by Developer, unless any such change would necessitate a correlative change in the size, shape or dimension of adjoining commercial spaces theretofore sold, in such event changes may only be made with the consent of the owner of such adjoining commercial space, Developer shall evidence any such changes by separate plat, filed of record, identifying the said commercial space by floor and number, and otherwise meeting the requirements of law as to the description of such commercial space. Each said plat shall dedicate the commercial space, as so represented, to the Condominium Regime herein created, shall be signed by Developer, and upon being placed of record shall be incorporated herein and become a part hereof as though originally described in this Declaration. Said plat shall also contain a statement of the fractional or percentage interest that each commercial unit (of which the amended commercial space is a part) bears to the entire project, which shall determine the respective undivided interest of said commercial unit in the common areas and facilities and limited common areas and facilities, as herein defined and described; the respective interest of said commercial unit for voting purposes and proportionate share in the common expenses; and for all purposes necessary hereunder. Said plat shall be binding upon all Owners purchasing a commercial unit (and their respective Mortgagees) prior to the execution and recordation thereof, and all Owners and Mortgagees covenant and agree that the rights they acquire hereunder shall be subject to such right to Developer.

B. Change in Declaration and/or By-Laws by Developer. Developer reserves and shall have the right, from time to time to change or amend this Declaration and the By-Laws of the Association of Owners that may from time to time be in effect for the purpose of facilitating the marketing of the project or complying with requirements of financial institutions, title companies, or civil authorities, and the like, affecting the project. The Developer's voting rights shall be consistent with the percentage interest retained in ownership by the developer.

Any changes or amendments by Developer contemplated by this paragraph, or in Paragraph A above, shall not change the effective proportionate share of Owners or previously sold units for voting or assessment purposes.

C. Common Areas and Facilities. Fourteen separate freehold estates, each consisting of the respective undivided interest in the common areas and facilities

appurtenant to (and to be conveyed with) each respective commercial space, and each said Owner, his successors, assigns, administrators, executors, heirs, devisees and grantees, covenant and agree that the undivided interest in the common areas and facilities and the title to the respective commercial spaces shall not be separated, or separately conveyed or partitioned during the existence of the Condominium Regime, and each of the said commercial spaces shall be deemed to be conveyed and encumbered with its respective interest in the common areas and facilities even though the description in the instrument of conveyance or encumbrance may refer only to the title to the commercial space and its percentage of the other areas.

D. Limited Common Areas and Facilities. Fourteen separate freehold estates, each consisting of an undivided interest in the limited common areas and facilities which are appurtenant to (and are to be conveyed with) each respective commercial space, and each said Owner, his successors, assigns, administrators, executors, heirs, devisees and grantees, covenant and agree that the undivided interest in the limited common areas and facilities and the title to the respective commercial space shall not be separated, or separately conveyed or partitioned, during the existence of the Condominium Regime, and each of the said commercial spaces shall be deemed to be conveyed or encumbered with its respective interest in the limited common areas and facilities even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the commercial space and its percentage of the other areas.

ARTICLE FOUR - PROPORTIONATE SHARES OF OWNERS

The proportionate shares of the Owners of the respective commercial units in the common expenses of the common areas and facilities, as well as proportionate representation for voting purposes in the Association of Owners, is based upon the fractional or percentage interest that each of the commercial units referred to herein bears to the entire project at the time of construction of the project. The respective interests for voting purposes, and the proportionate shares in the common expenses shall be as set forth in Exhibit "A", attached hereto and to which reference is made for all purposes which shall remain fixed and constant.

ARTICLE FIVE - EASEMENTS AND USE OF COMMON AREAS

Each Owner shall have the right to use and enjoy the common areas in common with all other Owners, for the purposes for which they are intended, and as may be

required for access, ingress and egress, to and use the occupancy and enjoyment of the respective commercial units by their respective Owners, without hindering or encroaching upon the lawful rights of other Owners. Such right to use the common areas shall extend to the Owner of each commercial unit, employees, and the customers and guests of each unit owner and/or authorized occupant thereof. The right to use the common areas shall be subject to and governed by the provisions of the Act, this Declaration and the By-Laws hereinafter mentioned, and the rules, regulations and resolutions lawfully made or adopted by the Association or the Council. Each Owner shall be deemed to have an easement in the interest of all other Owners in the common areas for the installation, maintenance, and repair of all individually owned fixtures, appliances and equipment, including, but not limited to, the individually owned heating and air-conditioning units and systems, which are affixed to or supported by or located in any space or structure constituting part of the common areas. Each Owner shall be further deemed to have an easement in common with all other Owners, in, upon, across, over, through, and with respect to the common areas to the extent of such right to use the common areas.

A. Easements. A valid easement shall exist in each commercial unit and in each portion of the common areas for the benefit of each Owner and the municipality and each utility company serving this project, for the installation, maintenance, repair, replacement or removal of any and all service and/or utility lines, pipes, wires, conduits, facilities and equipment and the spaces occupied by air-conditioning equipment, serving the project as a whole or any commercial unit, and the ownership of the commercial units shall be subject to such easements.

B. Maintenance and Repairs. Each Owner shall furnish and be responsible for, at his own cost and expense, all the decorating and all of the maintenance, repairs and replacements within his own commercial unit except as to the common areas located hereon. Specifically, but without limitation, each Owner shall repair or replace his own individual heating and air-conditioning unit, individual lighting and electrical fixtures, all glass in any window, sliding door, or forming part of any wall or door of any commercial unit, and all other elements and contents of his commercial unit which are not part of the common area. Maintenance, repair, and replacement of the common areas shall be furnished by the Association or Council as part of the common expenses.

C. Reciprocal Easements. To the extent that any equipment, facilities or fixtures within any commercial unit shall be connected to similar equipment, facilities

or fixtures serving or affecting other commercial units in the common areas, then reciprocal easements for the maintenance of same shall exist, and the use thereof shall be subject to such rules or regulations as the Association or Council may adopt in respect thereto. All workmen and other persons authorized by the Association or Council, or the temporary or other managing agent, shall be entitled to reasonable access and entry to the individual commercial units as may be required in connection with the maintenance, repair or replacement of or to the common areas or any equipment, facility or fixture affecting or serving other units or the common areas.

ARTICLE SIX - RESTRICTIONS

In addition to and without limitation upon the other provisions herein contained, Developer, its administrators, executors, successors, grantees, devisees and assigns, by this Declaration, and all Owners of the commercial units, by their acceptance of their respective Deeds, and all possessors or users of the commercial units and their respective heirs, administrators, executors, successors, devisees and assigns, upon acceptance of their respective ownership, possession or use of a commercial unit, covenant and agree for the benefit of themselves and other Owners, possessors or users of interests in said project, (all of which covenants shall be deemed as covenants and restrictions running with the lands) as follows:

1. The majority of the owners of the condominium units shall designate and appoint an Architectural Control Committee consisting of not less than four (4) qualified persons, which committee shall serve at the pleasure of the owners.

2. No signs, other than signs initially placed upon the condominium units by developer, shall be erected upon any condominium commercial unit, nor shall any exterior addition to, or change or alteration to any such condominium unit, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of same shall have been submitted to, and approved in writing by, the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography.

3. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, then such committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the committee shall

not be required, and full compliance with these restrictions shall be deemed to have been had.

4. In the event an owner of any commercial condominium unit shall fail to maintain the exterior of said commercial condominium unit in a neat and orderly manner, two-thirds of the owners, shall have the right, through the Architectural Control Committee, to enter upon said commercial condominium unit and to repair, maintain, and restore the exterior of the condominium unit, all at the expense of the owner of said commercial condominium unit.

5. No noxious or offensive activity shall be carried on upon any commercial condominium unit or any of the common areas thereto, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

6. No structures of a temporary character, trailer, mobile home, or other out-building shall be used on any of the common areas of the commercial condominium complex at any time without first obtaining the written consent of the Architectural Control Committee.

7. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any commercial condominium unit or any of the common areas adjacent thereto.

8. No commercial condominium unit shall be used at any time for residential purposes.

9. Any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by the provisions of this declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

11. The covenants, conditions, and restrictions in this declaration shall run with and bind the land, and shall inure to the benefit of, and be enforced by, the owners of any commercial condominium unit subject to this declaration, and their respective legal representatives, heirs, successors, and assigns, and, unless amended as provided herein, shall be effective for a term of twenty (20) years from the day this declaration is recorded, after which time said covenants,

conditions, and restrictions shall be automatically extended for successive periods of ten (10) years. The covenants, conditions, and restrictions of this declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the commercial condominium unit owners; during any succeeding ten (10) year period, the covenants, conditions, and restrictions of this declaration may be amended during the last year of any such ten (10) year period by an instrument signed by not less than seventy-five (75%) percent of the commercial condominium unit owners. No amendment shall be effective until recorded in the Deed Records of Midland County, Texas, nor until the approval of any governmental regulatory body which is required shall have been obtained.

These covenants and restrictions are expressly made subject to and in addition to any prior restrictive covenants of record in Midland County, Texas.

A. Division of Common Areas. That the common areas and facilities shall remain undivided; that no Owner shall partition, either voluntarily or judicially, said common areas and facilities; that the elements constituting a commercial unit (this is the individual commercial space, its assigned parking and storage space and the undivided interest in the common and limited common elements appurtenant thereto) shall be held and owned together and such elements shall not be separated, separately sold, conveyed or otherwise disposed of or encumbered; 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 Condominium.

B. Use of Commercial Unit. All commercial units shall be utilized for any lawful professional business, or commercial activity to which the general public may or may not be invited.

Encroachments. Although Developer has endeavored to construct the project in strict accordance with the description as set forth on the plats annexed hereto, it is expressly agreed that the square footage, size and dimensions of each commercial unit as set out and shown in this Declaration or in the plats annexed hereto, are approximate and are shown for description purposes only, and that Developer does not warrant, represent or guarantee that any commercial unit contains the precise area, square footage or dimensions shown by the plat thereof. Each Owner hereby expressly waives any claim or demand which he may have against Developer, or anyone, on account of any difference, shortage or discrepancy between the commercial unit

and project as actually and physically existing and as it is shown on the respective parts thereof annexed hereto. That if any portion of the common areas and facilities encroaches upon the commercial units, a valid easement for the encroachment and for the maintenance of same so long as it stands, shall and does exist, and in the event the project structure is partially or totally destroyed, and then rebuilt, that encroachment of parts of the common areas and facilities due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall and do exist.

D. Membership in Association of Owners. That each Owner shall automatically be a member of the Association of Owners, hereinafter referred to as the "Association," and shall remain a member of said Association until such time his membership in said Association shall automatically cease.

E. Administration of Condominium. That the administration of the Condominium shall be in accordance with the By-Laws of the Association. Until such time as Developer sells and conveys Eight (8) commercial units or the expiration of two (2) years from the date this Declaration is filed for record, whichever comes first, the Developer as Temporary Administrator shall exclusively act as and represent, and shall have all the authority, powers, functions and duties of the Association and the Council. The Developer shall render this service without compensation to it for such services, however, the Developer shall have the right to employ a Temporary Managing Agent for a period not to exceed two (2) years from the date this Declaration is filed for record and to pay such Temporary Managing Agent such compensation as Developer shall determine to be reasonable for his services as such. All sums and compensation paid to such Temporary Managing Agent for his services shall be part of the common expenses, and the owner of each unit shall pay his pro-rata share and part thereof. Such Managing Agent shall have all the duties, responsibility, functions and authority as shall be specified in his contract of employment and as may be delegated to him. Upon the expiration of one (1) year from the date this Declaration is filed for record, or at such time as Developer has sold and conveyed Eight (8) commercial units, whichever comes first, the Developer shall give written notice of such to the owner of each commercial unit. Such notice shall also specify the date, time and place for a meeting of the unit owners for the purpose of organizing the Association and electing the first Council. However, the employment of said Temporary Managing Agent shall continue for the duration of his contract, if such temporary administration ceases prior to the expiration of the term of such contract.

F. Provisions of Ownership. That each Owner, tenant or occupant of a commercial unit shall own or occupy said commercial unit subject to and shall comply with all of the provisions of this Declaration and the By-Laws (which also are agreed to be covenants and restrictions running with the land), decisions and resolution of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, decision or resolution shall be grounds for an action to recover sums due, for damages and/or for injunctive relief, or such other remedies or relief as may be set forth in this Declaration, the By-Laws of the Association, or otherwise. All expenses of the Association or Council, or authorized representative, in connection with the curing of any such default or any such action shall be part of the common expenses and collectable as other common expenses.

Insurance. The Association shall obtain and continue in effect master or blanket property (including, without limitation, fire and other hazards) and liability insurance to insure the project and the owners thereof against risks of whatever character, without prejudice to the right of each owner to additionally insure his own commercial unit on his own account and for his own benefit. Such insurance shall be written in the name of the Association or any person designated in the By-Laws of this Declaration as a trustee for each commercial unit Owner and each commercial unit Owner's mortgagee, if any. Each Owner and his mortgagee, if any, shall be a beneficiary, even though not expressly named, in the percentages or fractions established in this Declaration. In the event of loss the Association is irrevocably designated as trustee of each of the Owners for purposes of adjusting losses with the carrier on the master policy, and shall have full control of the proceeds for purposes of reconstruction.

The Association shall be required to make every effort to secure insurance policies providing:

- a. Waiver of subrogation by insurer as to any claims against the Association, Manager, and Owners, their respective families, servants, agents and guests;
- b. That the master policy not be cancellable, invalidated or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents and guests;
- c. That the master policy not be cancellable, invalidated or suspended on account of the conduct of the Association or Manager without prior demand that the Association or Manager cure the defect; and

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that the 'no other insurance' clause in the master policy excludes Owner's policies from consideration.

The insurance cost and premiums for any such blanket or master insurance coverage shall, at the sole option of each unit Owner: (1) be a common expense to be paid by monthly or other periodic assessments as determined by the Association, in which case all such payments collected for insurance shall be used solely for the payment of such insurance cost or premiums as the same become due; or (2) be a common expense to be paid periodically by an electing unit owner to an escrow fund, in an amount equal to that payable under subparagraph (1) above, established and continued for this purpose by the electing unit Owner's mortgagee. If a unit Owner elects to make its payment for any such blanket or master insurance coverage directly to said escrow fund, as specified in subparagraph (2) above, it may, at a later date, upon giving ninety (90) days written notice to the Association, elect to make such payments in the manner specified in subparagraph (1) above. If a unit Owner elects to make its payment for any such blanket or master insurance coverage in the manner specified in subparagraph (1) above, it may, at a later date, upon giving ninety (90) days written notice to the association, elect to make such payments in the manner specified in subparagraph (2) above. If a unit Owner elects to make its payments for any such blanket or master insurance coverage in the manner specified in subparagraph (2) above, it shall, within ten (10) days of each such election, provide the Association with written verification of payment thereof. An election under subparagraph (2) hereof shall in no way affect the status of the Association as trustee for each commercial unit Owner and each commercial unit Owner's mortgagee, if any, or the status of each Owner and his mortgagee, if any, as beneficiary, even though not expressly named, in the percentages or fractions established in this Declaration, under such blanket or master insurance coverage. This option shall in no way prohibit, hinder, or otherwise deter a unit owner from acquiring additional separate insurance coverage upon the terms and conditions set forth below.

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In the event a unit Owner may carry property or liability insurance individually upon his interest in the project, which, in case of loss, results in proration of insurance proceeds between the master policy carried by the Association and the Owner's policy shall be payable to the Association, who is irrevocably designated as trustee of each insuring Owner for the purpose of reconstruction. Any overplus remaining upon completion of re-construction directly affecting any such Owner shall thereupon be paid by Association to Owner.

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Each Owner acquiring additional separate insurance coverage will furnish Association with a copy of each such policy within ten days following acquisition. Insofar as may be permitted by law, each such policy acquired by Owner shall contain waivers of subrogation and of any defense based on co-insurance and shall further provide that any policy shall not be cancellable, invalidated or suspended on account of the conduct of one or more of the Owners, or his respective family, servants, agents and guests.

H. Amendments to Declaration. That this Declaration shall not be revoked unless all of the owners and all of the mortgagees covering the commercial units are unanimously agreed as to such revocation or amendment by duly recorded instruments. This declaration may only be amended at a meeting of the unit Owners, at which the amendment is approved by the holders of at least 67% of the owners' interest in the condominium. No amendment of the declaration may alter or destroy a unit or a limited common element without the consent of the owners affected and the owner's first lien mortgagees.

I. Payment of Assessments by Owners. That each Owner will pay, 10 days from date each such assessment is delivered, the monthly assessments imposed by the Association to meet all project communal expenses, including without limitation, costs of maintenance, upkeep, insurance, utilities, which may include a liability insurance premium and an insurance premium for policy to cover repair and reconstruction work in case of fire, hurricane, earthquake or other hazards. That said assessment may also include a premium for such other insurance policies as Workmen's Compensation, as the Council of Owners of the Association (herein called "Council") may deem expedient. The assessment shall be made pro-rata according to the fraction or percentage interest of the unit owned as stipulated hereinabove and shown in Exhibit "C" hereto attached. Such assessment shall include monthly payments to an adequate general operating reserve and reserve fund for replacement of common facilities and equipment, including, without limitation, periodic re-decoration of common and limited common areas. Unpaid assessments will bear interest at the rate of twelve (12%) percent per annum, beginning 30 days after the assessment is delivered, and continuing until paid.

J. Waiver of Use of Common Areas. That no Owner of a commercial 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 areas and facilities or restricted common areas and facilities or by the abandonment of his commercial unit.

(Provided, however, that all unoccupied commercial units owned by Developer (unsold or sold and re-acquired) shall be exempt from liability for assessment for all common expenses.)

K. Security for Unpaid Assessments.

(1) There is a present and continuing lien on each commercial unit to secure payment of the amount of any present or future assessments, whether regular or special, charged to such commercial unit pursuant to the terms hereof, which lien and the right to foreclose the same shall be in addition to and not in substitution for all of the rights and remedies which the Owners and the Council may have to enforce the provisions hereof. The title of each Owner of a commercial unit is acquired subject to and burdened with a lien, which lien shall be prior to the acquisition of any homestead rights by Owner of a commercial unit, and all other liens, except (a) such liens shall be subject and subordinate to and shall not affect the rights of the holder of any recorded first mortgage or first deed of trust upon such commercial unit made in good faith and for value; and (b) all liens for taxes or special assessments levied by the city, county and state governments or any political subdivision or special district thereof. In the event any lien imposed under the provisions of this paragraph is destroyed by reason of the foreclosure of any superior mortgage or deed of trust on the commercial unit subject to such; nevertheless, there shall be a corresponding lien on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, charged to such commercial unit after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein; provided, however, the purchaser acquiring title to such commercial unit at such foreclosure sale, and his successors and assigns, shall not be liable for the share of unpaid common expenses or assessments chargeable to such commercial unit prior to such foreclosure sale, and such unpaid share of the common expenses or assessments shall be deemed to be a common expense collectible from all of the owners, including such purchaser or acquirer, his successors and assigns. Upon request by any owner, the Council will furnish, for the benefit of any prospective purchaser or present or prospective encumbrancer of such commercial unit, a statement showing all amounts then due which are secured by such lien.

(2) In the event of default by any owner in the payment of any assessment secured hereby, the Council shall execute a written notice of such default and of their election to cause to be sold the commercial unit belonging to such defaulting owner to satisfy the obligations secured hereby.

(3) The Council or its representative acting on behalf of the Owners shall have the right after ten days following the actual delivering of notice to the commercial unit of such defaulting owner, to foreclosure of such liens, either by judicial foreclosure or by power of sale hereinafter contained.

(4) If such default shall be made, and not made good following the expiration of said ten days, at the request of the Council, the Chairman, or such successor or successors appointed hereunder, is hereby authorized and empowered by each Owner to sell the respective commercial unit at public auction to the highest bidder for cash at the Court House door, Midland County, Texas between the hours of 10:00 o'clock A.M. and 4:00 o'clock P.M. on the first Tuesday in any month after having given notice of the place, time and manner of sale by posting written notices thereof at three public places in said county, one of which shall be at the Court House door of said county, for three consecutive weeks prior to the day of sale, or as may be otherwise required by law, and that said sale as aforesaid shall execute and deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds in law to the property so sold, in fee simple, with the usual warranties, and shall receive the proceeds of said sale and out of the same shall pay:

(a) All charges, costs and expenses of executing such sale, including reasonable attorney's fees;

(b) All sums and assessments due hereunder with interest at the rate of twelve (12%) percent from the time of default until sale; and

(c) Shall render the overplus, if any, to any said respective owner or legal representatives or assigns.

(5) It is further agreed that in the event of a foreclosure under the powers granted hereby, the Owner in possession of said commercial unit or anyone claiming under him and in possession of said commercial unit or anyone claiming under him and in possession as tenant or otherwise, shall thereupon become a tenant at will of the purchaser at such foreclosure sale, and should such tenant refuse to surrender possession of said property upon demand, the purchaser shall thereupon be entitled to institute and maintain the statutory action of forcible entry and detainer, and obtain and procure a writ of possession thereunder.

(6) It is further agreed that in case of the death, resignation, removal or absence of the said Chairman from the County of Midland, Texas or his refusal or failure or inability to act, or when in the sole discretion of said Council it is

deemed desirable to appoint a substitute, said Council shall be and is hereby authorized to appoint a substitute in writing, who shall thereupon succeed to all the estate, rights and powers granted to the Chairman herein named.

(7) It is further agreed that in the event of a default, that the Chairman, or his successors, may delegate the ministerial duty of posting of notices as aforesaid by his duly authorized agent and attorney in fact, appointed by instrument in writing.

(8) It is further specially agreed that in the case of any sale hereunder, all prerequisites to said sale be presumed to have been performed and that in any conveyance given hereunder all statements, facts or other recitals therein made as to the non-payment of money secured or as to the breach or non-performance of any of the covenants herein set forth or as to the request of the Chairman to enforce this power of sale or as to the proper and due appointment of any substitute hereunder, or as to the advertisement of sale, or time or place or manner of sale, or as to any preliminary act or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

(9) It is further specially agreed that the Council, or any person authorized by it, or any Owner, as well as the defaulting Owner, shall have the right to become the purchaser of any said property sold upon a judicial foreclosure and sale, or sold upon the sale thereof under the terms and provisions herein contained. In the event the Council so acquires the commercial unit of a defaulting Owner, title will be taken in the name of a nominee, as trustee for the Council, and the Council will have the right to hold, lease, mortgage, sell and convey the same on behalf of the unit Owners.

(10) In any such foreclosure sale of the defaulting commercial unit Owner shall be required to pay a reasonable rental, and Council shall be entitled to the appointment of a receiver to collect the same.

(11) In the event of such uncured default as is set forth in this paragraph, in addition to all other remedies hereunder, or otherwise existing, Association shall have the right to disconnect, or cause the disconnection, all utility services to such commercial unit, for so long as such default continues.

L. In the event of any default by any Owner under the provisions of the Act, Declaration, By-Laws or rules or regulations lawfully adopted for this project, the Association and/or Council or their authorized representative, shall have each and all of the rights and remedies which may be provided by the Act, this Declaration

or the By-Laws or which may be available at law or in equity and may prosecute any action against such defaulting Owner and/or others for the enforcement of any lien or to enforce compliance with the particular matter in respect to which default was made, by injunction relief or otherwise, and/or for the collection of any sums or debts or damages in default or arising out of such default. The right of the Association or Council hereunder shall be cumulative with, and in addition to, all other rights and remedies otherwise existing. All expenses of the Council or Association or its authorized representative in connection with any such action shall be part of the common expenses and collectible as other common expenses.

M. That every Owner will perform promptly all maintenance and repair work within his own commercial unit which, if omitted, would affect the project in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that may be caused by such failure.

N. That each Owner shall promptly reimburse the Association for any expenditures incurred in repairing or replacing any common area or facility damages through any Owner's fault or negligence.

O. The Owners shall not make or allow to make structural modifications or alterations in the commercial unit or installations located therein, without previously notifying the Association in writing through the management agent, if any, or the Chairman of the Council if no management agent is employed. However, in any event, in order to maintain a pleasing external appearance, owners will not change, alter, or modify outside signs, or place, allow or cause to be placed thereon any partitions, awnings, structures, or fixtures of any kind. The Association shall have the obligation to answer within 14 days, and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. In this connection, Owners who desire to alter the size of their respective commercial spaces, by purchase or sale of a portion of contiguous commercial spaces, may constitute the changes in the commercial spaces a commercial unit in the project by filing of record an amended plat depicting the new commercial unit, each of the affected commercial spaces, identifying them by floor and number, and otherwise meeting the requirements of law as to the description of such commercial space. Said plat also contain a statement of the fractional or percentage interest that each such changed commercial unit bears to the entire project, which shall determine: the respective undivided interest of said commercial units in the common areas and facilities and limited common areas and facilities, as herein

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defined and described; the respective interest of each of said commercial units for voting purposes and proportionate share in the common expenses; and for all other rights and purposes hereunder.

Each said plat dedicating the changed commercial spaces, as so represented, to the Condominium Regime herein created, shall be signed by the Owners of the affected commercial spaces and the Chairman of the Association, and upon being placed of record shall be incorporated herein and become a part hereof as though originally described in this Declaration. No change in the size of contiguous commercial spaces shall be made, however, unless:

(1) All assessments of the Association against each affected commercial unit are paid in full;

(2) Each Owner of an affected commercial space secures prior written approval for such changes from the Association (which approval shall relate to compliance with the requirements of this Paragraph O(3) below, and which consent shall not be unreasonably withheld), and mortgagees, if any, holding interests on each such commercial units; and

(3) Such changes will not affect the structural integrity, external walls, stairwells and interior walls contiguous to common or limited common areas, etc. of the project.

P. That nothing shall be done or kept in any commercial unit or the common or restricted common areas which will increase the rate of insurance on any part of the project or which will result in the cancellation of insurance on the project or any part thereof, or which would be a violation of any governmental statute, ordinance, rule or regulation, and no waste shall be permitted in the common areas or restricted common areas. That nothing shall be done or allowed to be done in the common areas or restricted common areas which will impair the structural integrity or structurally alter any of the building or structures in the project.

That each Owner grants the right of entry to the management agent or to any other person authorized by the Council or the Association in case of any emergency originating in or threatening his unit, whether the owner is present at the time or not.

R. That no Owner of the project shall post or allow to be posted any advertisements or posters of any kind in or on the project except as authorized by the Association.

S. That each Owner shall exercise and cause to be exercised extreme care about making noises or the use of musical instruments, radios, televisions and amplifiers

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that may disturb other owners. Nothing shall be done or kept in the commercial unit or in the common or restricted common areas which will constitute noxious or offensive activity. Any pets causing or creating a nuisance will be permanently removed from the project upon notification by the Council to Owners.

T. That no Owner will hang or allow to be hung any garments, rugs or any other object from the windows or any other exterior portion of the project, or to dust rugs, et cetera, from the windows or to clean rugs, et cetera, by beating on the exterior part of the project, or throw garbage or trash outside the disposal installations provided for such purpose in the service areas.

U. That no Owner shall install or allow to be installed any wiring for electrical or telephone installations, television antennae, or machines on the exterior of the project or that protrude through the walls or roof of the project, except as authorized by the Association.

V. That no development shall be made or permitted of the air space above any commercial unit, common or limited common area.

W. Owners of the respective commercial units shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration, and further subject to the By-Laws attached hereto, and made a part hereof.

X. That in the event the property subject to this Declaration is totally or substantially destroyed or damaged, the reconstruction, repair or disposition of the property shall be as provided by the Condominium Act, Texas Property Code Annotated, Title Chapter 81 (and its successors) of the Revised Civil Statutes of the State of Texas or such other agreement as is approved by two-thirds of the Owners of the commercial units.

Y. That in a voluntary conveyance, including herein passage of title by gift, devise or the law of descent and distribution, of a commercial unit the subsequent Owner or Owners, as the case may be, of the commercial unit shall be jointly and severally liable with the grantor, or former Owners, 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, gift of devise, without prejudice to the subsequent Owner's right to recover from the former Owners the amounts paid by the subsequent Owner therefor. In the event the Association becomes the Owner of a commercial unit or units, either through voluntary or involuntary sale, all assessments that would thereafter be made against any such commercial unit during ownership of the Association will be deemed a common expense.

Z. That all agreements and determinations lawfully made by the Association in accordance with the voting percentages hereinabove established in the Declaration shall be deemed binding upon all Owners of commercial units, their successors and assigns.

AA. That each Owner covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other rights assigned to the Association by reason of the establishment of the Condominium.

BB. Any owner (herein referred to as "Selling Owner") who wishes to sell, rent, or lease his commercial unit shall, at least fifteen days prior to the accepting of any offer to purchase or lease, give both to the Developer (so long only as Developer owns any interest in the project) and Association of Owners one copy of written notice of the terms of such offer, including the name and address of the offeror and a financial statement of such offeror, which notice is sometimes referred to herein as Notice of Sale, Rent or Lease. Notice and delivery shall be given by mailing to Developer, by registered or certified mail, at:

Midland Industrial Partnership
P. O. Box 6347
Odessa, Texas 79767-6347

The Developer and Association shall at all times have the first right and option to purchase, rent or lease the commercial unit and, if, within fifteen days after the delivery of such Notice of Sale, Rent or Lease, the Developer or Association shall submit an equal offer to purchase, rent or lease, such delivery, by Developer or Association, shall constitute an exercise of such option, and the Selling Owner will accept the offer of Developer or Association, as the case may be, in preference to the original offer described in the Notice of Sale, Rent or Lease. In the event both Developer and Association submit offers, the option shall be deemed exercised by Developer rather than Association. If the Developer or Association do not submit an identical offer within said fifteen-day period, the Selling, Renting or Leasing Owner may, at the expiration of said fifteen-day period, at any time within sixty days after the expiration of said period, accept the offer described in the notice. The provisions of this paragraph shall not apply to (a) any sale held pursuant to the power of sale contained in a mortgage or deed of trust held by a bona fide lender or any sale held pursuant to a judicial foreclosure; (b) sales or leases of any part of said project by Developer or Association.

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CC. That all of the provisions of the Condominium Act, Texas Property Code Annotated, Title 7, Chapter 81 (and its successors) of Texas Revised Civil Statutes, known as the "Condominium Act" are hereby expressly incorporated herein by reference and shall be cumulative and in addition to the provisions of this Declaration; provided, however, that in the event of conflict between the provisions of the said Act and this Declaration, the provisions of this Declaration shall control.

DD. All notices, communications, and remittances to the Council of the Association of Owners shall be sent to it at its mailing address which may be established from time to time and of which the owners in this project shall be notified.

EE. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the development and operation of a condominium development. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof. The provisions hereof shall be deemed to be independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity and enforceability of any other provision hereof.

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EXECUTED this 27 day of AUGUST, 1984.

MIDLAND INDUSTRIAL PARTNERSHIP

Cliff Rowe
Cliff Rowe

Bob Batte
Bob Batte

Duane Batte
Duane Batte

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THE STATE OF TEXAS

COUNTY OF Midland

BEFORE ME, the undersigned authority, on this day personally appeared Cliff Rowe, Bob Batte and Duane Batte, known to me to be the persons whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 27th day of August, 1984.



Leonora Jones
Notary public in and for State of Texas
MIDLAND COUNTY
Notary Public

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MARKET MANOR CONDOMINIUM
SHOPPING CENTER
EXHIBIT "C"

Total Square Footage to be occupied
19798.49 Sq. Ft. = 100%

Unit No.	Unit Area Sq. Ft.	% of Ownership
1	1421.39	7.17%
2	1468.62	7.418
3	1468.62	7.418
4	1468.62	7.418
5	1449.73	7.32
6	857.56	4.33
7	1468.62	7.418
8	1468.62	7.418
9	1449.73	7.32
10	1449.73	7.32
11	1468.62	7.418
12	1468.62	7.418
13	1468.62	7.418
14	1421.39	7.17
TOTAL	19798.49	100.00%

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Filed for Record on the 27 day of August A.D. 1984, at 10:55 o'clock A M.
Duly Recorded this the 27 day of August A.D. 1984, at 3:00 o'clock P M.

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

INSTRUMENT NO. 17331

By Diana Lara, Deputy

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