

CONDOMINIUM DECLARATION  
FOR  
CROSSPOINT BUSINESS CENTER CONDOMINIUMS, PHASE I

State of Texas  
County of Hidalgo

**Preamble**

This Declaration is made on January 16, 2003, by Pajaamco Family Limited Partnership, a Texas limited partnership, whose mailing address is P.O. Box 5475, McAllen, Texas, 78502-5475.

**RECITALS**

1. Declarant is the owner of all of the real property, including the land; all improvements and structures on the property; and all easements, rights, and appurtenances belonging to the property that is located in the City of Edinburg, County of Hidalgo State of Texas (the "Property"), more particularly described in Exhibit A, which is attached and incorporated by reference.
2. Declarant submits the Property to a condominium regime established by the Texas Uniform Condominium Act ("TUCA"), which is codified in Chapter 82 of the Texas Property Code.
3. The Property constitutes a condominium project (the "Project") within the meaning of TUCA. The formal name of the Project is Crosspoint Business Center Condominiums, Phase I.
4. Declarant intends and desires to establish by this Declaration a plan of ownership for the condominium project ("Project"). The plan consists of individual ownership of commercial units (the "Unit(s)") and other areas. The Project shall be divided into no more than 21 Units.
5. The Declarant intends to impose on the Project mutually beneficial restrictions for the benefit of all Units and the persons who own those Units (the "Owners"). The Declarant further intends, in accordance with the terms set forth herein, that the Owners will govern the Project by means of an organization of Owners (herein the "Association"), as more particularly set forth herein. The formal name of the Association is Crosspoint Business Center Condominiums, Phase I Owners's Association, Inc.
6. The Units and other areas of the Project are more particularly described in Exhibits A and B, which are attached and incorporated by reference. The Owners each have an undivided interest in the remaining property of the Project (referred to as the "Common Elements"), which is also more particularly described in Exhibits A and B. Exhibit C sets forth the allocation to each Unit of (a) a fraction or percentage of undivided interests in the common elements of the condominium, (b) a fraction or percentage of undivided interests in the common expenses of the Association, and (c) a portion of votes in the Association, by the formulas set forth therein.
7. Therefore, the Declarant declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the division of the Property into Units, and all of which are established and agreed on for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project and every part of the Project. All of the covenants, conditions, and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in or any part of the Property and shall be for the benefit of each Owner of the Project or any interest in the Project and shall inure to the benefit of and be binding on each successor in interest of the Owners.

ARTICLE 1  
DEFINITIONS

- 1.01. *Articles* mean the Articles of Incorporation of the Association that are or shall be filed in the Office of the Secretary of State of the State of Texas.
- 1.02. *Association* means the Crosspoint Business Center Condominiums, Phase 1 Owners's Association, Inc., a corporation organized under the Texas Non-Profit Corporation Act for the management of the Project, the membership of which consists of all of the Owners in the Project.
- 1.03. *Board* means the Board of Directors of the Association.
- 1.04. *Bylaws* mean the Bylaws of the Association and amendments to the Bylaws that are or shall be adopted by the Board.
- 1.05. *Condominium* means the separate ownership of single units in a multiple-unit structure or structures with common elements.
- 1.06. *Common Elements* mean all elements of the Project except the separately owned Units, and includes both general and limited common elements.
- 1.07. *Declarant* means Pajaamco Family Limited Partnership and successors and assigns.
- 1.08. *Declaration* means this Declaration document and all that it contains.
- 1.09. *General Common Elements* mean all the Common Elements except the Limited Common Elements.
- 1.10. *Governing Instruments* mean the Declaration, and the Articles of Incorporation and Bylaws of the Association.
- 1.11. *Limited Common Elements* mean the Common Elements allocated for the exclusive use of one or more but less than all of the Units.
- 1.12. *Manager* means the person or corporation, if any, appointed by the Board to manage the Project.
- 1.13. *Owner(s)* means any person that owns a Unit within the Project.
- 1.14. *Person* means an individual, firm, corporation, partnership, association, trust, other legal entity, or any combination of persons or entities.
- 1.15. *Project* means the entire parcel or the Property described in Exhibit A, including the land, all improvements and structures on the Property, and all easements, rights, and appurtenances belonging to the Property that are divided or are to be divided into Units to be owned and operated as a Condominium. The Project shall be divided into no more than 21 Units.
- 1.16. *Rules* mean and refer to the Rules and Regulations for the Project adopted by the Board pursuant to this Declaration.
- 1.17. *Unit* means a physical portion of the condominium designated by Exhibits A and B for separate ownership and occupancy.

ARTICLE 2  
THE PROPERTY

**Property Subject to Declaration**

- 2.01. All the real property described in Exhibit A to this declaration, including the land; all improvements and structures on the property; and all easements, rights, and appurtenances belonging to the property (referred to as the "Property") shall be subject to this Declaration.

### **Exclusive Ownership and Possession**

2.02. Each Owner shall be entitled to the exclusive ownership and possession of the Owner's Unit. Any Unit may be jointly or commonly owned by more than one Person. No Unit may be subdivided. The boundaries of the Unit shall be and are the interior surfaces of the perimeter walls, floors, and ceilings. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and other finish surface materials are a part of the Unit. An Owner shall not be deemed to own the utilities running through the Owner's Unit that are utilized for or serve more than one Unit, except as a tenant in common with the other Owners. An Owner shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows, and doors bounding the Owner's Unit.

### **Common Elements**

2.03. Each Owner shall be entitled to an undivided interest in the Common Elements described in Exhibit C in the percentage expressed in Exhibit C. The percentage of the undivided interest of each Owner in the Common Elements, as expressed in Exhibit C, shall have a permanent character and shall not be altered without the consent of all Owners, expressed in an amended, duly recorded Declaration. The percentage of the undivided interest in the Common Elements shall not be separated from the Unit to which it pertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though the interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Elements in accordance with the purpose for which they are intended as long as the lawful rights of the other Owners are not hindered or encroached on.

### **Limited Common Elements**

2.04. The Common Elements designated as Limited Common Elements in Exhibit C are reserved for the exclusive use of the Owners of the Units to which they are appurtenant.

### **Partition of Common Elements**

2.05. The Common Elements, both General and Limited, shall remain undivided and shall not be the object of an action for partition or division of ownership so long as the Property remains a Condominium Project. In any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all mortgagees must be obtained.

### **Nonexclusive Easements**

2.06. Each Owner shall have a nonexclusive easement for the use and enjoyment of the General Common Elements and for ingress, egress, and support over and through the General Common Elements. These easements shall be appurtenant to and shall pass with the title to each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

### **Other Easements**

2.07. The Association may grant to third parties easements in, on, and over the Common Elements for the purpose of constructing, installing, or maintaining necessary utilities and services. Each Owner, in accepting the deed to the Unit, expressly consents to such easements. No such easement may be granted, however, if it would interfere with any exclusive easement or with any Owner's use, occupancy, or enjoyment of the Owner's Unit.

### **Easements for Maintenance of Encroachments**

2.08. None of the rights and obligations of the Owners created in this Declaration or by the deeds granting the Units shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist provided, however, that in no event shall a valid easement for an encroachment be created in favor of any Owner if the encroachment occurred because of the willful conduct of the Owner.

ARTICLE 3  
UNIT OWNERS ASSOCIATION

**Association**

3.01. The Association is charged with the duties and invested with the powers prescribed by law and set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws.

**Membership**

3.02. Membership in the Association is automatically granted to the Owner or Owners of each Unit in the Project. On the transfer of title to any Unit, the membership of the transferor automatically ceases and each new Owner becomes a member.

**Voting Rights**

3.03. Each Unit shall have one vote. If an Unit has more than one Owner, the aggregate vote of the Owners of the Unit may not exceed one vote per Unit.

**Membership Meetings**

3.04. Meetings of the Owners shall be called, held, and conducted in accordance with the requirements and procedures set forth in the Bylaws.

**General Powers and Authority**

3.05. The Association shall have all of the powers allowed by TUCA, as well as all the powers of a nonprofit corporation established under Texas law, subject only to the limitations contained in this Declaration and in the other Governing Instruments. The Association may perform all acts that may be necessary for, or incidental to, the performance of the obligations and duties imposed on it by this Declaration and the other Governing Instruments. The powers of the Association shall include, but are not limited to, the following:

- (a) The power to establish, fix, and levy assessments against Owners in accordance with the procedures and subject to the limitations set forth in Article 4 of this Declaration.
- (b) The power to adopt reasonable operating rules governing the use of the Common Elements and any facilities located on the Common Elements, as well as the use of any other Association property.
- (c) The right to institute and maintain actions for damages or to restrain any actual or threatened breach of any of the provisions of the Governing Instruments or Association Rules in its own name, either on its own behalf or on behalf of any consenting Owner.
- (d) The right to discipline Owners for violation of any of the provisions of the Governing Instruments or Association Rules by suspension of the violator's voting rights or privileges for use of the Common Elements or by imposition of monetary penalties, subject to the following limitations:
  - (i) The accused Owner must be given written notice of the violation or property damage, stating the amount of any proposed fine or damage charge and that the Owner may request a written hearing before the Board within thirty (30) days of the notice.
  - (ii) The accused Owner must be given a reasonable time, by a date specified in the notice, to cure the violation and avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months.
  - (iii) The accused Owner must be given written notice of a levied fine or damage charge within thirty (30) days after the date of levy.
  - (iv) Any suspension of privileges or imposition of monetary penalties shall be reasonably related to the Owner's violation.

(e) The power to delegate its authority, duties, and responsibilities, through the Board of Directors, to such committees, officers, or employees as are permitted to be retained under the Governing Instruments.

(f) The right, through its agents or employees, to enter any Unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as is practicable and any damage caused by the entrance shall be repaired by the Association at its own expense.

#### Board of Directors and Officers of the Association

3.06. The affairs of the Association shall be managed and its duties and obligations performed by a Board of Directors. Provisions regulating the number, term, qualifications, manner of election, and conduct of meetings of the members of the Board of Directors shall be set forth in the Bylaws of the Association. The Board shall elect officers, which shall include a President, Treasurer, Secretary, and such other officers as the Board may deem proper. Provisions regulating the numbers, term, qualifications, manner of election, powers and duties of the officers shall be set forth in the Bylaws of the Association.

#### Duties of the Association

3.07. In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Instruments, the Association shall be responsible for the following:

(a) Operation and maintenance of the Common Elements and the facilities located on the Common Elements. This duty shall include, but shall not be limited to, exterior painting, maintenance, repair, and landscaping of the Common Elements and of the furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.

(b) Acquisition of and payment from the maintenance fund for the following:

(i) Water, sewer, garbage, electrical, telephone, gas, and other necessary utility service for the Common Elements and, to the extent not separately metered and charged, for the Units.

(ii) A policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of the Units and Common Elements payable as provided in Article 6 of this Declaration, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their mortgagees, as their respective interests may appear.

(iii) A policy or policies insuring the Board, the Owners and/or the Association against any liability to the public or to the Owners and their tenants and invitees, incident to the ownership and/or use of the Project, including the personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than \$ 1,000,000.00 for any one person injured, \$3,000,000.00 for any one accident, and \$500,000.00 for property damage. The limits and coverage shall be reviewed at least annually by the Board and varied in its discretion, provided, however, that the said limits and coverage shall never be of fewer kinds or lesser amounts than those set forth in this Paragraph. The policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement in which the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured.

(iv) Workers' compensation insurance to the extent necessary to comply with any applicable laws.

(v) The services of personnel that the Board shall determine to be necessary or proper for the operation of the Common Elements.

(vi) Legal and accounting services necessary or proper for the operation of the Common Elements or the enforcement of this Declaration.

(c) Preparation and distribution, on a regular basis, of financial statements to the Owners in accordance with the following:

(i) A pro forma operating statement for each fiscal year shall be distributed not less than 60 days before the beginning of the fiscal year.

(ii) A balance sheet, as of an accounting date that is the last day of the month closest in time to 6 months from the date of closing of the first sale of an Unit in the Project, and an operating statement for the period from the date of the first closing to the accounting date shall be distributed within 60 days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of the Project Units and the names of the persons assessed.

(iii) A balance sheet as of the last day of the Association's fiscal year and an operating statement for the fiscal year shall be distributed within 60 days after the close of the fiscal year.

(d) Maintenance of the following books and records, such books and records to be kept in accordance with generally accepted accounting procedures:

(i) Financial records with a detailed account of the receipts and expenditures affecting the Project and its administration and specifying the maintenance and regular expenses of the Common Elements and any other expenses incurred by or on behalf of the Project.

(ii) Minutes of proceedings of Owners, Board of Directors, and Committees to which any authority of the Board of Directors has been delegated.

(iii) Record of the names and addresses of all Owners with voting rights.

(iv) Plans and specifications used to construct the Project.

(v) The condominium information statement given to all Owners by the Declarant before sale.

(vi) Voting records, proxies, and correspondence relating to declaration amendments.

(e) Arrangement for an annual independent audit of all books and records of the Association.

#### **Declarant's Control Period**

3.08. Declarant shall have the power to appoint and remove officers and members of the Board until one hundred twenty (120) days after Declarant has conveyed seventy-five (75) percent of the Units in the Project to Owners other than Declarant, provided, however, that, not later than the one hundred twentieth (120th) day after Declarant's conveyance of fifty (50) percent of the Units to Owners other than a Declarant, not less than one third of the Board members must be elected by Owners other than Declarant.

#### **Powers and Duties of the Board of Directors**

3.09. The Board shall act in all instances on behalf of the Association, unless otherwise provided by this Declaration. The Board's powers and duties shall include, but shall not be limited to, the following:

(a) Enforcement of the applicable provisions of this Declaration, the Bylaws, and any Rules of the Association.

(b) Payment of taxes and assessments that are or could become a lien on the Common Elements or a portion of the Common Elements.

(c) Contracting for casualty, liability, and other insurance on behalf of the Association.

(d) Contracting for goods and services for the Common Elements, facilities, and interests of the Association.

(e) Delegation of its powers to such committees, officers, or employees of the Association as are expressly authorized by the Governing Instruments.

(f) Preparation of budgets and financial statements for the Association as prescribed in the Governing Instruments.

(g) Formulation of rules of operation for the Common Elements and facilities owned or controlled by the Association.

(h) Initiation and execution of disciplinary proceedings against Owners for violations of provisions of the Governing Instruments in accordance with procedures set forth in the Governing Instruments.

(i) Authorizing entry into any Unit as necessary in connection with construction, maintenance, or emergency repair for the benefit of the Common Element or the Owners in the aggregate.

#### **Limitations on Powers of Board of Directors**

3.10. Notwithstanding the powers set forth in Paragraph 3.08 of this Declaration, the Board shall be prohibited from taking any of the following actions except with the approval of a majority of the voting power of the Association residing in the Owners:

(a) Entering into (i) a contract with a third person under which the third person will furnish goods or services for a term longer than one year, (ii) a contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate; or (iii) prepaid casualty and/or liability insurance of not more than 3 years duration, provided that the policy provides for short-rate cancellation by the insured.

(b) Incurring aggregate expenditures for capital improvements to the Common Elements in any fiscal year in excess of 25% of the budgeted gross expenses of the Association for that fiscal year.

(c) Selling during any fiscal year property of the Association having an aggregate fair market value in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.

(d) Paying compensation to Directors or to officers of the Association for services rendered in the conduct of the Association's business, provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying out the business of the Association.

### **ARTICLE 4**

#### **ASSESSMENTS**

##### **Covenant to Pay**

4.01. The Declarant covenants and agrees for each Unit owned by it in the Project, and each Owner by acceptance of the deed to such Owner's Unit is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. All moneys collected shall be put into a maintenance fund to be used to defray expenses attributable to the ownership, operation, and maintenance of common interests by the Association. The Owner may not waive or otherwise escape liability for these assessments by non-use of the Common Elements or by abandonment of the Owner's Unit.

##### **Regular Assessments**

4.02. Regular assessments shall be made in accordance with the following. Within 60 days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements with adjustments made for any expected income and surplus from the prior year's fund. This estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Units owned by

said Owner to the total number of Units in the Project subject to assessment. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month.

#### **Special Assessments**

4.03. Special assessments shall be made in accordance with the following. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year because of the cost of any construction, unexpected repairs, replacements of capital improvements on the Common Elements, or for any other reason, it shall make a special assessment for the additional amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments.

#### **Commencement of Assessments**

4.04. Regular assessments shall commence on the date of closing the sale and purchase of the first Unit to be sold and purchased.

#### **Liability for Assessments**

4.05. Each monthly portion of a regular assessment and each special assessment shall be a separate, distinct, and personal debt and obligation of the Owner against whom the assessments are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent.

#### **Payment of Assessments on Conveyance of Unit**

4.06. On the sale or conveyance of an Unit, all unpaid assessments against an Owner for the Owner's share in the expenses to which Articles 4.02 and 4.03 of this Declaration refer shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- (a) Assessments, liens, and charges in favor of the State of Texas and any political subdivision of the State of Texas for taxes past due and unpaid on the Unit.
- (b) Amounts due under mortgage instruments duly recorded.

#### **Lien for Delinquent Assessments**

4.07. The obligation to pay Assessments levied by the Association hereunder, all other monetary amounts due hereunder, and the performance of all obligations imposed on an Owner hereunder are part of the purchase price of each Unit when sold to an Owner. An express vendor's lien is hereby retained to secure the payment of each and every Assessment levied hereunder, and each such vendor's lien is hereby transferred and assigned to the Association, each such vendor's lien to be superior and paramount to any homestead or other exemption provided by law. The Association may enforce the payment of Assessments in accordance with the provisions of this Article 4.

#### **Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; the Lien; and Remedies of Association.**

4.08. (a) Effective as of, and from and after the filing and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Lien and equitable charge on each Unit to secure (a) the full and timely payment of each and all assessments, (b) the full and timely payment of all other charges and monetary amounts, and (c) the performance of all obligations imposed on the Owner hereunder. The assessments, charges and monetary amounts, and obligations shall be collectively referred to as "Obligations" in this Article 4. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof is not paid on the date (s) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the highest lawful rate of interest per annum and costs of collection thereof, become a continuing debt secured by the self-executing Lien on the Unit of the non-paying Owner which shall bind such Unit in the hand of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation



and demand the full payment thereof. The personal obligation of the then-existing Owner to pay and perform the Obligations, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien securing the Obligations shall be unaffected by any sale or assignment of a Unit and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any Obligation provided herein by non-use of the Common Elements or abandonment of the Unit. No diminution or abatement of Obligations shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the Obligations being a separate and independent covenant on the part of each Owner.

(b) If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent assessment, charge or fine shall bear interest from and after the date when due at the highest lawful rate of interest per annum until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to that amount of any unpaid assessment, charge, fine or any delinquent account any and all attorney's fees and other costs of collection incurred by the Association.

(c) The Association may, at its discretion but subject to all applicable debt collection statutes: (i) prepare and file a lien affidavit in the public records of Hidalgo County, Texas, which specifically identifies the unpaid assessment, charges or fines; and (ii) publish and post, within one or more locations within the Properties, a list of those individuals or entities who are delinquent and, if applicable, their suspended use and enjoyment of the Common Elements until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

(d) All agreements between any Owner and the Association and/or Declarant, whether now or existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be returned to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

(e) The lien described within the preceding section is and shall be a contract Lien. Each Owner, for the purpose of better securing the Obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of Units within the Project, has granted, sold and conveyed and by these covenants does grant, sell and convey

unto the Trustee, such Owner's Unit. To have and to hold such Unit, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Unit unto the said Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.

(f) This conveyance is made in trust to secure payment of each and all assessments and other obligations prescribed by these Covenants to and for the benefit of the Association as the Beneficiary. In the event of default in any Obligations hereby secured, in accordance with the terms thereof, then and in such event, Beneficiary may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code), and in the event of default in the Obligations when due or declared due, it shall thereupon, or at any time thereafter be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Unit then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended, and otherwise complying with that statute, the Trustee shall sell the Unit, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Unit as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the Purchaser or Purchasers, with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees provided for, and then to Beneficiary the full amount of principal, interest, attorney's fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sale price, if any, to the Owner, his heirs or assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs and assigns.

(g) It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or its substitute or successor, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract Lien, that it may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, its substitute or successor to sell the Unit in accordance with the provisions of this section. Beneficiary, if it is the highest bidder, shall have the right to purchase at any sale of the Unit, and to have the amount for which such Unit is sold credited on the debt then owing. Beneficiary in any event is hereby authorized to appoint a substitute trustee or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Unit is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event any sale is made of a Unit, or any portion thereof, under the terms of this section, the Owner, his heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the Purchaser at such sale, and in the event of his failure to do so he shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of his failure to surrender possession of said property upon demand, the Purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated. The foreclosure of the continuing contract Lien on any one or more occasions shall not remove, replace, impair or extinguish the continuing lien from securing all obligations arising from and after the date of foreclosure.

ARTICLE 5  
RESTRICTIONS AND COVENANTS

**General Restrictions on Use**

5.01. The right of an Owner and the Owner's guests to occupy or use the Owner's Unit or to use the Common Elements or any of the facilities on the Common Elements is subject to the following restrictions:

- (a) All Condominiums shall be used only for professional offices, such as, but not limited to, medical, dental, accounting, legal, insurance, home health agencies, and other similar professional businesses; laboratories; pharmacies; and related and supporting clinical and therapeutic health care services. "Therapeutic" includes physical therapy, occupational therapy, massage therapy, day spas, and the like. No Condominium shall be used for residential purposes. The agents, servants and employees of each Owner, as well as the licensees, customers, patients, concessionaires, tenants, business invitees, designees and assignees of each Owner, shall have a non-exclusive license to utilize the parking areas, streets, driveways, aisles, sidewalks, common service and rest areas, and similar facilities composing the Common Elements (exclusive of the limited Common Elements), and parking facilities, from time to time, but subject to the provisions of the Act, this Declaration, the By Laws, and all Rules and Regulations of the Association promulgated pursuant thereto.
- (b) No Owner shall lease a Condominium Unit other than on a written form of lease requiring the lessee to comply with the Declaration, the By-Laws and the Rules of the Association, and providing that failure to comply constitutes a default under the lease. The Board of Directors may provide a suggested standard form lease for use by Owners. Each Owner of a Condominium Unit shall, promptly following the execution of any lease of a Condominium Unit, forward a conformed copy thereof to the Board of Directors. The foregoing provisions of this Paragraph shall not apply to Declarant, or to a mortgagee in possession of a Condominium Unit as a result of a foreclosure or other judicial sale, or as a result of any proceeding in lieu of foreclosure. No lease may be for less than 1 year.
- (c) There shall be no obstruction of the Common Elements. Nothing shall be stored in the Common Elements without the prior consent of the Board, except as expressly provided for in the Declaration, or in designated storage areas.
- (d) Nothing shall be done or kept in any Unit or in the Common Elements that will increase the rate of insurance on the Common Elements without the prior written consent of the Board. No Owner shall permit anything to be done or kept in the Owner's Unit or in the Common Elements that will result in the cancellation of insurance on any Unit or on any part of the Common Elements or that would be in violation of any law. No waste shall be permitted in the Common Elements. No gasoline, kerosene, cleaning solvents, or other flammable liquids shall be stored in the Common Elements or in any Unit, provided, however, that reasonable amounts in suitable containers may be stored in the storage spaces.
- (e) No sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board, except a sign advertising the property for sale.
- (f) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Unit or in the Common Elements.
- (h) No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done in any Unit or in the Common Elements that may be or become an annoyance or nuisance to the other Owners.
- (i) Nothing shall be altered or constructed in or removed from the Common Elements, except on the written consent of the Board.
- (j) There shall be no violation of the Rules adopted by the Board and furnished in writing to the Owners pertaining to the use of the Common Elements. The Board is authorized to adopt such Rules.

### **Maintenance**

5.02. Except for those portions that the Association is required to maintain and repair, each Owner shall, at the Owner's sole cost and expense, maintain and repair the Owner's Unit so as to keep it in good condition and repair. Each Owner shall also maintain and repair those portions of the Common Elements subject to an exclusive easement appurtenant to the Owner's Unit.

### **Damage Liability**

5.03. Each Owner shall be liable to the Association for all damage to the Common Elements or to other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or the Owner's family, guests, or tenants.

### **Exemption**

5.04. Declarant shall be exempt from the restrictions of Article 5.01 of this Declaration to the extent reasonably necessary for completion of construction, sales, or additions to the Project. Such exemption includes, but is not limited to, placing advertising signs on Project property and generally making use of the Project Units and Common Elements as is reasonably necessary to carry on construction activity.

## **ARTICLE 6**

### **DAMAGE OR DESTRUCTION**

#### **Application of Insurance Proceeds**

6.01. (a) If the Project is damaged by fire or any other disaster, the insurance proceeds, except as provided in Paragraph 6.01(b) of this Declaration, shall be applied to reconstruct the Project.

(b) Reconstruction shall not be compulsory if at least 80 percent of the vote of the Owners, which shall include the vote of each Owner of a unit or assigned limited common element that will not be rebuilt or repaired, is cast not to rebuild. If the Owners so vote to not rebuild any Unit, that Unit's allocated interests shall be automatically reallocated on the vote as if the Unit had been condemned, and the Association shall prepare, execute, and record an amendment to Exhibit C of the Declaration reflecting the reallocation. If the entire Project is not repaired or replaced and unless otherwise unanimously agreed to by the Owners, the proceeds shall be delivered pro rata to the Owners or their mortgagees, as their interest may appear, in accordance with the percentages or fractions set forth in Exhibit C of this Declaration.

#### **Insufficient Insurance Proceeds**

6.02. When reconstruction is required by the terms of Article 6.01 of this Declaration, but the insurance proceeds are insufficient to cover the cost of reconstruction, the costs in excess of the insurance proceeds and reserves shall be considered a common expense that is subject to the Association's lien rights.

#### **Obtaining Bids for Reconstruction**

6.03. If the Project is damaged by fire or any other disaster, the Board shall obtain firm bids, including the obligation to obtain a performance bond, from two or more responsible contractors to rebuild the Project in accordance with its original plans and specifications. The Board shall also, as soon as possible after obtaining the bids, call a special meeting of the Owners to consider the bids. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner may obtain bids and call and conduct a meeting as provided by this Article 6.03. At such meeting, the Owners may, by a vote of not less than sixty-seven (67) percent of the votes present, elect to reject all of the bids or, by not less than fifty-one (51) percent of the votes present, elect to reject all the bids requiring amounts more than five hundred dollars (\$500) in excess of available insurance proceeds. If all bids are rejected, the Board shall obtain additional bids for presentation to the Owners. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable.

ARTICLE 7

RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUST

Declarant warrants that beneficiaries under deeds of trust to Units in the Project shall be entitled to the following rights and guaranties:

(a) Should any of the Association's Governing Instruments provide for a "right of first refusal," such right shall not impair the rights of a beneficiary under a first lien deed of trust to the following:

(i) To exercise the power of sale, foreclose, or take title to an Unit pursuant to the remedies provided in the deed of trust.

(ii) To accept a deed or assignment in lieu of sale or foreclosure in the event of default by a grantor.

(iii) To interfere with a subsequent sale or lease of an Unit so acquired by the beneficiary.

(b) A beneficiary under a first lien deed of trust is entitled, on request, to written notification from the Association of any default in the performance by the grantor of any obligation under the Association's Governing Instruments that is not cured within sixty (60) days.

(c) Any beneficiary under a first deed of trust who obtains title to an Unit pursuant to the remedies provided in the deed of trust will not be liable for such Unit's unpaid assessments that accrue prior to the acquisition of title to the Unit by the beneficiary.

(d) Unless at least two thirds (2/3) of the beneficiaries under first deeds of trust (based on one vote for each first deed of trust owned) or Owners other than Declarant give their prior written approval, the Association shall not be entitled to the following:

(i) By act or omission, to seek to abandon or terminate the Project.

(ii) To change the pro rata interest or obligations of any individual Unit for the purpose of:

(A) Levying assessments or charges.

(B) Allocating distributions of hazard insurance proceeds or condemnation awards.

(C) Determining the pro rata share of ownership of each Unit in the Common Elements and in the improvements in the Common Elements.

(iii) To partition or subdivide any Unit.

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

(v) In case of loss to an Unit and/or Common Elements of the Project, to use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Elements) for other than the repair, replacement, or reconstruction of such property, except as provided by statute.

(e) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

(f) No provision of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of a beneficiary under a first deed of trust to an Unit pursuant to its deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Elements or portions of the Common Elements.

(g) Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. The reserve fund will be funded through the regular monthly assessments rather than by special assessments.

## ARTICLE 8

### GENERAL PROVISIONS

#### Amendment

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

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

(c) Any amendment shall be evidenced by a writing that is prepared, signed, and acknowledged by the President or other officer designated by the Board to certify amendments. The amendment shall be effective on filing in the office of the county clerk of Hidalgo County, Texas.

#### Nonwaiver of Remedies

8.02. Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

#### Severability

8.03. The provisions of this Declaration shall be deemed independent and severable. The invalidity, partial invalidity, or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

#### Binding

8.04. This Declaration, as well as any amendment to this Declaration, and any valid action or directive made pursuant to it shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

#### Interpretation

8.05. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce the provision or any other provision of this Declaration.

#### Limitation of Liability

8.06. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of the Owner's entire interest in the Owner's Unit with respect to obligations arising from and after the date of such divestment.

#### Notices

8.07. (a) Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given with when delivered personally at the appropriate address set forth in Article 8.08(b) of this Declaration, or on the third day after deposit in any United States post office box, postage prepaid, addressed as set forth in Article 8.08(b) of this Declaration.

(b) Any notice to an Owner required under this Declaration shall be addressed to the Owner at the last address for the Owner appearing in the records of the Association or, if there is none, at the address of the Unit in the Project. Notice to the Association shall be addressed to the address designated by the Association by written notice all Owners. Notices to the Manager shall be

addressed to the address designated by the Manager. Notices to Declarant shall be addressed to P.O. Box 5475, McAllen, Texas, 78502-5475.

**Number, Gender, and Headings**

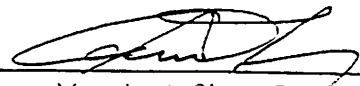
8.08. As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part of this Declaration and shall not affect the interpretation of any provision.

Executed on January 16, 2003.

**DECLARANT**

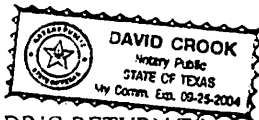
**Pajaamco Family Limited Partnership**

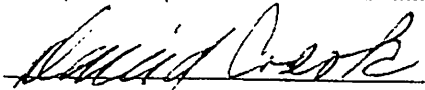
By: Kasido Corporation, its sole General Partner

By:   
Macaulay A. Ojeaga, President

THE STATE OF TEXAS  
COUNTY OF HIDALGO

This instrument was acknowledged before me on January 16, 2003, by Macaulay A. Ojeaga, President of Kasido Corporation., a Texas corporation, sole general partner of Pajaamco Family Limited Partnership, a Texas limited partnership, on behalf of said limited partnership.



  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

PREPARED BY:

David Crook, Attorney at Law  
100 Savannah Ave., Suite 380  
McAllen, Texas 78503

David Crook, Attorney at Law  
100 Savannah Ave., Suite 380  
McAllen, Texas 78503