

DECLARATION AND MASTER DEED

WOODHAVEN CONDOMINIUMS

Dallas, Dallas County, Texas

THIS DECLARATION AND MASTER DEED ("Declaration"), made on the date hereinafter set forth, by MILLER CONDOMINIUM CORP., a Texas corporation ("Declarant"), is made with reference to the following facts:

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

B. The Property consists of the real property and eighteen (18) residential buildings containing a total of one hundred fifty-six (156) units therein, together with other improvements now or hereafter erected thereon, facilities and appurtenances thereto and all property, real, personal or mixed, intended for use or used in connection with the Property, being hereinafter sometimes referred to as the "Project".

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

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

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

## ARTICLE I.

### DEFINITIONS

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

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

Section 1.3. "Association" shall mean and refer to Woodhaven Condominiums Homeowners Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act, of which the Owners shall all be Members, which corporation shall administer the operation and management of the Project. The term "Association" shall have the same meaning as the term "Council of co-owners" in the Texas Condominium Act.

Section 1.4. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association as the same may from time to time be constituted.

Section 1.5. "Building" shall mean and refer to one or more of the structures erected on the Property containing two or more Units.

Section 1.6. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

Section 1.7. "Common Elements" shall mean and refer to both the General and Limited Common Elements described herein.

Section 1.8. "Common Expenses" means and includes:

Section 1.8.1. All sums lawfully assessed with respect to the Common Elements by the Board;

Section 1.8.2. Expenses of administration, management, maintenance, repair or replacement of the Common Elements, as provided herein, including a reasonable reserve for such purposes;

Section 1.8.3. Expenses agreed upon as Common Expenses by the Owners; and

Section 1.8.4. All sums designated as Common Expenses by or pursuant to the Project Documents.

Section 1.9. "Common Interest" means the proportionate undivided interest in and to the Common Elements which is appurtenant to each Unit.

Section 1.10. "Condominium" or "Unit" shall mean and refer to the separate ownership of an individual unit, consisting of an enclosed space comprising one or more rooms occupying all or a part of one or more floors in a Building, together with an undivided interest in the Common Elements. The term "Condominium" or "Unit" shall have the same meaning as the term "apartment" in the Texas Condominium Act.

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

Section 1.12. "Declaration" shall mean and refer to this enabling Declaration and Master Deed as the same may be amended, changed or modified from time to time as provided for herein.

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

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

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

Section 1.13.3. The grounds, yards, gardens, swimming pools, clubrooms, managerial offices, mail rooms, unassigned parking areas, driveways, fences, unassigned storage areas, streets, service drives, walks, service easements, recreational common areas, laundry rooms, boiler rooms, mechanical rooms, and areas used for storage of maintenance and janitorial equipment and materials, if any;

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

Section 1.13.5. Parking spaces not yet designated with a Unit number and described on the Map attached hereto as unassigned parking spaces; provided, however, that the Declarant expressly reserves the right for itself and/or the Board of Directors at any time and from time to time to assign and to reassign parking spaces to Owners; and provided further, coincidental with the assignment or reassignment of any parking space, or after the assignment of all unassigned parking spaces, the Map attached hereto may be amended without the consent of any Owner for the purpose of designating any such parking space with a number corresponding to the Unit number, and thereafter such parking space shall be a Limited Common Element appurtenant to such Unit, subject to the right to reassign granted herein;

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

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

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

Section 1.14. "Insurer" or "Guarantor" shall mean an insurer or governmental guarantor of any first lien Deed of Trust or Mortgage.

Section 1.15. "Limited Common Elements" shall mean those Common Elements reserved for the use of a specified Unit or Units to the exclusion of others, consisting of:

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

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

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

Section 1.15.4. Any trash chutes for use by those Units to which they are respectively associated; and

Section 1.15.5. Such portions of the perimeter walls, floors, ceilings, doors, windows, and all associated fixtures and

structures therein as lie outside the Unit boundaries but that serve only such Unit.

Section 1.16. "Map", or "Condominium Plan" shall mean and refer to the engineering survey of the Property locating thereon all improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements, said Map being filed herewith as Exhibit "B" and by this reference made a part hereof for all purposes, as the same may be amended from time to time as herein provided. The Map sets forth, among other things, a survey showing the location of each Building designated by letter, a general description and plat of each Unit showing its square footage, Building location, floor and Unit number and a general description of the Common Elements.

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

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

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

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

Section 1.21. "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 1.22. "Project" shall mean and refer to the Property, the Buildings, all other improvements and structures on the Property, and all rights, easements and appurtenances belonging thereto.

Section 1.23. "Project Documents" shall mean and refer to this Declaration and the exhibits attached hereto, the Articles, the Bylaws and the Rules and Regulations of the Association, as the same may be established or amended from time to time.

Section 1.24. "Property" shall mean the real property more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

Section 1.25. "Rules and Regulations" shall mean and refer to the Rules and Regulations of the Association as adopted and amended from time to time by the Board concerning the management and administration of the

Project for the use and enjoyment of the Owners. The initial set of Rules and Regulations may be promulgated by the Declarant.

Section 1.26. "Texas Condominium Act" or "Act" shall mean Article 1301a of the Texas Revised Civil Statutes, enacted in 1963, which permits the creation of condominium regimes, as said Act is amended or supplemented in any successor statute.

## ARTICLE II.

### DIVISION OF PROJECT AND CREATION OF PROPERTY RIGHTS

Section 2.1. Division of Project. On the Map attached hereto, each Building in the Project is lettered, and the Units located therein are numbered as shown on the Map. The Project is divided into two freehold estates, Units and Common Elements.

Section 2.1.1. Units. Each Unit shall consist of the following portions of the Building: (i) the interior surface of each bearing wall; (ii) the interior surface of the roof; (iii) the upper surface of the concrete sub-floor; (iv) the interior surface (including all glass or glass substitute) of the windows and doors set in bearing walls (patios and balconies, if any, shall not be included as components of the Units conveyed but shall have the character of Limited Common Elements appurtenant thereto for the exclusive use of the Owners thereof); (v) the air space enclosed within the area described within (i) through (iv) above; (vi) any and all walls, ceilings, floors, partitions and dividers wholly within such air space (but excluding any pipes, ducts, wire, cables, conduits, bearing beams or supports contained within such walls, ceilings, floors, partitions and dividers or within such air space); and (vii) all plumbing, heating, fixtures and equipment (exclusive of pipes, ducts, wires, cables or conduits) located wholly or partly within such air space. In determining dimensions of, and area contained within, each Unit, the enclosed space within a Unit shall be measured from interior finished, unpainted surfaces of the bearing walls, floors and ceilings, and each patio and/or balcony, if any, in such Unit may be measured to the exterior surface of its retaining fence or wall.

It is expressly stipulated, and each and every purchaser of a Unit, his heirs, executors, administrators, successors and assigns, hereby agree that the square footage, size and dimensions of each Unit, as set out and shown in this Declaration (or on the Map) are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimensions shown by the Map. Each purchaser and Owner of a Unit, or interest therein, has had full opportunity, and is under a duty, to

inspect and examine the Unit purchased by him prior to the purchase thereof, and agrees that the Unit is purchased as actually and physically existing. Each purchaser of a Unit hereby expressly waives any claim or demand that he may have against the Declarant or other seller of such Unit on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the Map. Each Unit is subject to such encroachments and protrusions as are contained in the Building, whether the same now exist or may be later caused or created in any manner. In interpreting deeds, mortgages, leases, the Map and other instruments for any purpose whatsoever or in connection with any matter, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Map, regardless of settling, rising or lateral movement of the Building and regardless of minor variance between boundaries shown on the Map or deed, and those of the Building.

Section 2.1.2 Common Elements. Each Unit Owner shall have as an appurtenance to his Unit an undivided percentage interest in the Common Elements as set forth herein. The ownership of each Condominium shall include a Unit and such undivided interest in the Common Elements. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered once sold by Declarant, except as provided elsewhere herein, including, without limitation, Sections 2.3 and 13.5. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner shall have a non-exclusive right to use the General Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners. Notwithstanding the transfer of the ownership of the Common Elements to the Owners as tenants in common, the Declarant shall reserve and hereby reserves unto itself, and to the Association or its designated agents, an easement over and onto the Common Elements for common driveway purposes, for drainage and encroachment purposes and for ingress to and egress from the Common Elements for the purpose of completing improvements thereon and for the performance of necessary repair work. Declarant further reserves unto itself, and to the Association or its designated agents, the right to establish easements, reservations, exceptions and exclusions consistent with the ownership of the Project and for the best interest of the Owners and the Association in order to serve the entire Project.

Section 2.1.3. Limited Common Elements. The rights of an individual Owner in the Limited Common Elements shall consist of (1) an exclusive easement to use for vehicle parking purposes, the parking space or spaces specifically originally assigned or

reassigned by Declarant or the Association to the Owner as being appurtenant to his Unit, if any; (2) an exclusive easement to use the utilities, lines and installations described in Section 1.15.3 and the areas described in Section 1.15.5; (3) an exclusive easement to use a patio, balcony, trash chute and storage area, if any, adjacent to and appurtenant to the Unit, as shown on the Map; and (4) an exclusive easement to use such other areas and facilities as may be designated in this Declaration and on the Map, as the same may be amended from time to time.

Section 2.1.4. Interest in Common Elements. Each Unit Owner shall have as an appurtenance to his Unit the undivided percentage interest in the Common Elements as set forth in Exhibit "C" attached hereto and incorporated herein by reference for all purposes with respect to his Unit.

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

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

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



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

Section 2.3.3. Partition or subdivide any Unit owned by Declarant, to redetermine the Common Interest of those Units so partitioned or subdivided, and to amend the Declaration to include said changes; and

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

### ARTICLE III.

#### ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Association to Manage Common Elements. The management of the Common Elements and the administration of the affairs of the Project shall be vested in the Association in accordance with the terms of this Declaration and the Bylaws and all Owners of the Units and all holders of liens thereon shall be bound thereby. The Owners of all the Units covenant and agree that the administration of the Project shall be in accordance with the provisions of the Project Documents, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project or the Association, as same may be amended from time to time.

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

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

Section 3.4. Voting Rights. The Owner or Owners of each Unit shall be entitled to one vote, the value of which shall equal the Common Interest assigned to said Owner's or Owners' Unit as set forth in Section 2.1.4.

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

#### ARTICLE IV.

##### ASSESSMENTS

Section 4.1. Personal Obligation of Assessments. Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed, as a part of the purchase money consideration for such deed of conveyance, to covenant and agree to pay to the Association: (1) regular monthly Assessments or charges, and (2) special Assessments for capital improvements and unexpected expenses, such Assessments to be established and collected as provided herein, in the Bylaws and in the Rules and Regulations of the Association. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

Section 4.2. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project and for the improvement and maintenance of the Common Elements for the common good of the Project. The Board may use said Assessments for said purposes, including, without limitation, providing for the enforcement of the provisions of the Project Documents. The decision of the Board with respect thereto shall be final so long as made in good faith. Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Elements. The Limited Common Elements shall be maintained as General Common Elements, and Owners having exclusive use thereof shall not be subject to any special charges or assessments for the repair or maintenance thereof except as otherwise provided in this Declaration and the Bylaws, including, but not limited to, Section 5.2 hereof.

Section 4.3. Regular Monthly Assessments and Creation of Lien. All Owners shall be obligated to pay the Assessments imposed by the Board of Directors. The total amount of the estimated funds required from Assessments to operate the Project shall be set forth in a budget adopted by the Board of Directors and shall be assessed against each Owner in proportion to the Common Interest of such Owner as set forth in herein, said figure to be divided by twelve (12) to determine the regular monthly Assessment; provided, however, that said Assessments based on said Common Interests may be rounded off to the nearest dollar figure.

**Section 4.4. Special Assessments.**

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incurred in connection with filing the lien, and in the event of any foreclosure proceeding, all additional costs, expenses and attorney's fees incurred in connection with any such foreclosure proceeding. The Owner of the Unit being foreclosed shall be required to pay to the Association the monthly Assessment for the Unit during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to bid on the Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any Mortgagee holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Assessments owing with respect to such Unit, but such payment shall not be deemed a waiver of the Owner's default by either the Association or such Mortgagee.

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

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

Section 4.6. Working Capital Fund. A working capital fund shall be established for the initial months of the operation of the Project. Each Owner acquiring a Unit from Declarant shall pay to the Association, as his share of such fund and not as an advance payment of regular Assessments, upon the closing of such acquisition an amount equal to two (2) months' estimated charge for operation of the Project applicable to such Unit. Within sixty (60) days following the conveyance by deed of the first Unit in the Project, Declarant shall pay to the Association an amount equal to the required payment into the working capital fund for each unsold Unit. The Association shall maintain the working capital fund in a segregated account.

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

such due date shall in no event be less than thirty (30) days subsequent to the date of such notice. The omission or failure of the Board to fix the Assessment for any month shall not be deemed a waiver, modification, or a release of the Owners from the obligation to pay.

Section 4.8. Transfer of Unit by Sale or Foreclosure. Sale or transfer of any Unit shall not affect the Association lien. However, the sale or transfer of any Unit pursuant to foreclosure of a Mortgage, or by deed, assignment or other transfer in lieu of foreclosure, shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer (except for Assessments which became due prior to the recordation of such Mortgage). No such sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof. When any Mortgagee of a Mortgage comes into possession of or obtains title to a Unit as a result of foreclosure of such Mortgage, or by deed, assignment, or other conveyance in lieu thereof, such Mortgagee shall not be liable for the unpaid dues or charges of the Association chargeable to such Unit which accrued subsequent to the recordation of such Mortgage and prior to the acquisition of title to such Unit by such Mortgagee. Such unpaid dues or charges shall be deemed to be Common Expenses collectible from all of the Units including the Unit acquired by such Mortgagee. In connection with a voluntary conveyance of a Unit (other than a deed or conveyance to a Mortgagee in lieu of foreclosure), the grantee of the same, upon payment to the Association of a reasonable fee not to exceed Twenty-Five and No/100 Dollars (\$25.00) and upon written request, shall be entitled to a statement from the Association setting forth the amount of any unpaid Assessments then due and owing to the Association with respect to the Unit being purchased, and such Unit conveyed shall not be subject to a lien for any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement and applicable to a period of time prior to the date of such statement; provided, however, the Unit conveyed shall be subject to a lien for any such Assessments becoming due after the date of any such statement.

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

the Assessments made under the provisions of this Article, and, if necessary, a special Assessment or Assessments may be levied against the Units in an amount equal to said taxes, to be paid thirty (30) days prior to the due date thereof.

## ARTICLE V.

### DUTIES AND POWERS OF THE ASSOCIATION

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

Section 5.1.1. Maintain, repair, replace, restore, install, operate and manage all of the Common Elements and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association in good condition. This obligation shall not extend to any portion or facility of the Common Elements required to be maintained by an individual Owner under this Declaration (specifically including, but not limited to, Sections 5.2, 5.3 and 13.7) or the Bylaws.

Section 5.1.2. Enforce the provisions of the Project Documents by appropriate means, including, without limitation, the expenditures of funds of the Association, the employment of legal counsel and the commencement and prosecution of actions. The current Project Documents shall be available for inspection by all Owners, Mortgagees and Insurers of Units during normal business hours of the Association that shall be set and announced for general knowledge.

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

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

Section 5.1.5. Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association; provided, however, no agreement for professional management of the Project shall have a term in excess of three (3) years and any such agreement must provide for termination by either party, without cause and without the requirement of payment of any penalty or termination fee, upon not more than ninety (90) days written notice to the other party thereto. Further, notwithstanding anything contained herein or in

the Bylaws to the contrary, in the event professional management of the Project has been previously required by any Mortgagee or Insurer, whether or not such Mortgagee or Insurer was, in fact, a Mortgagee or Insurer at the time of the imposition of such requirement, the Association shall not terminate professional management of the Project and assume self-management thereof without the prior written approval of Owners to which at least sixty-seven percent (67%) of the undivided interest in the Common Elements is allocated and Mortgagees holding first lien Mortgages on Units to which at least fifty-one percent (51%) of the undivided interest in the Common Elements applicable to Units covered by first lien Mortgages is allocated.

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

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

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

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

## ARTICLE VI.

### UTILITIES

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

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

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



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

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

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

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

## ARTICLE VII.

### USE RESTRICTIONS

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

Section 7.1. Use of Individual Units. No Unit shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade, business, professional, or other commercial activity of any type shall be conducted or operated therein; provided, however, that Declarant may use any Unit or Units in the Project owned by Declarant for a model home site or sites and display and sales office until the last Unit in the entire Project is sold. No more than four (4) individuals may occupy a three (3) bedroom Unit; no more than three (3) individuals may occupy any two (2) bedroom Unit; and no more than two (2) individuals may occupy a one (1) bedroom Unit on a permanent occupancy basis; provided, however, that in determining the number of bedrooms in a Unit, a den shall be counted as a bedroom. For purposes of this Section 7.1, "permanent occupancy" shall be defined as occupancy in excess of thirty (30) days not separated by intervals of at least six (6) months. No individual under sixteen (16) years of age may occupy any Unit on a permanent occupancy basis.

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

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

Section 7.4. Signs. Declarant may place signs in or around the common walks and drives and use the Common Elements for sales purposes until the last Unit in the entire Project is sold. Owners other than Declarant, however, are prohibited from placing "for sale", "for rent" or any other signs in or around the Common Elements or displaying signs to the public view on any Unit or any portion of the Project without the prior written consent of the Board.

Section 7.5. Animals. No animals, reptiles or birds of any kind (hereafter for brevity termed "animals") other than domestic dogs and cats shall be raised, bred, or kept in any Unit, or on any portion of the Project except as permitted in the Bylaws or in the Rules and Regulations adopted by the Board and published from time to time. If permitted by this Declaration, the Bylaws or in the Rules and Regulations adopted by the Board and published from time to time, animals shall be kept in such a manner so as not to disturb the other Owners. If an animal becomes obnoxious to other Owners, the Owner or person having control of the animal shall be given a written notice to correct the problem, and if not corrected, the Owner, upon written notice, will be required to remove the animal from the Unit and the Project. The written notices provided pursuant to this Section 7.5 shall be issued by the Board of Directors or Managing Agent. An Owner must receive the written permission of the Board of Directors or Managing Agent in order to keep an animal the weight of which will exceed twenty-five (25) pounds or more than two (2) animals in any Unit or on any portion of the Project. No animal will be permitted outside a Unit unless on a leash and accompanied by an Owner or his lessee or guest.

Section 7.6. Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly disposed of and shall not be allowed to accumulate on the Project. Trash, garbage and other waste shall not be kept except in sanitary containers in accordance with the Bylaws and the Rules and Regulations adopted by the Board and published from time to time.

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

Section 7.8. Right to Lease. No Unit Owner shall lease or rent his Unit for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days, nor shall less than an entire Unit be rented or leased. Subject to the foregoing restrictions and to those of Section 7.9 hereof, the Owners of the respective Units shall have the absolute right to lease the Units provided that the lease is in writing and is made subject to the covenants, conditions, provisions, easements, restrictions, limitations, liens for Common Expenses and uses contained in this Declaration and the Bylaws, and any Rules and Regulations (adopted by the Board and published from time to time) provided, however, any such lease must expressly provide that any failure by the lessee to comply with the Project Documents shall be a default under said lease. Notwithstanding any of the foregoing, the right of Declarant to rent or lease Units until their initial transfer to any third party or parties is hereby specifically reserved.

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

Section 7.10. Power Equipment and Car Maintenance. No power equipment, workshops, or car maintenance of any nature whatsoever shall be

permitted on the Project except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

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

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

## ARTICLE VIII.

### ARCHITECTURAL CONTROL

Section 8.1. Prohibition of Alteration and Improvement. Subject to the exemption of Declarant under Section 13.9 hereinbelow, no wall, obstruction, balcony, screen, patio, patio cover, tent, awning, reflective material on windows, exterior attachments, improvement, or structure of any kind shall be commenced, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto (save and except for repainting and redecorating of the interior of a Unit by an Owner) until the same has been approved in writing by the Board or by an Architectural Control Committee (the "Committee") appointed by the Board and/or Declarant as provided in this Article VIII.

Section 8.2. Plans and Approval. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations, shall be submitted to the Board or the Committee for approval as to such matters as quality of workmanship and design and harmony with structural and external design of existing structures, and as to location in relation to surrounding structures. No permission or approval shall be required to rebuild in accordance with Declarant's original plans and specifications, or to rebuild in accordance with plans and specifications previously approved by the Board or the Committee. The Board or the Committee shall respond in writing within sixty (60) days from the day it receives said request for approval of plans and specifications required under this Section 8.2. If the Board or the Committee does not respond in writing

within said sixty (60) day period, the Board or the Committee shall be deemed to have approved said request.

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

Section 8.3.1. If a Committee is appointed, there shall be three (3) members of the Committee.

Section 8.3.2. Declarant may appoint all of the original members of the Committee and all replacements until the last Unit in the entire Project is sold. Thereafter, the Board shall have the power to appoint all of the members of the Committee. Committee members appointed by the Declarant need not be Members of the Association. Committee members appointed by the Board shall, however, be from the membership of the Association.

## ARTICLE IX.

### MORTGAGEE PROTECTION CLAUSES

Section 9.1. Rights of Mortgagees. No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first lien Mortgage (meaning a Mortgage with first priority over any other mortgage) on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, unless otherwise provided herein.

Section 9.2. Notice to Mortgagees. All Mortgagees and Insurers that have filed with the Association an appropriate written request shall be entitled to receive the following notices in writing from the Association:

Section 9.2.1. Notice of default by the Owner or grantor of any Mortgage on a Unit (the beneficial interest in which is held by said Mortgagee or which is insured or guaranteed by said Insurer) in the performance of such Owner's or grantor's obligations under the Project Documents, which default is not cured within sixty (60) days;

Section 9.2.2. Notice of any loss to, or taking of, or damage or destruction of any individual Unit subject to a Mortgage (the beneficial interest in which is held by said Mortgagee or which is insured or guaranteed by such Insurer), which loss or taking exceeds One Thousand Dollars (\$1,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such loss, or taking, damage or destruction; and

Section 9.2.3. Notice of any loss to, or taking of any portion, or damage to, or destruction of, the Common Elements or facilities or improvements thereon, which loss or taking exceeds Ten Thousand Dollars (\$10,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such loss, or taking, damage or destruction.

Section 9.2.4. Notice of any lapse, cancellation or material modification of any insurance policy of fidelity bond obtained by the Association, which notice shall be given immediately upon the Board's obtaining knowledge of such lapse, cancellation or modification.

Section 9.2.5. Notice of any proposed action which would require the consent of a specified percentage of Mortgagees as provided herein.

Section 9.3. Changes Requiring Mortgagee Approval. Without the prior written approval of at least sixty-six and two-thirds percent (66-2/3%) of the Mortgagees [based upon one (1) vote for each Mortgage owned] or sixty-six and two-thirds percent (66-2/3%) of the undivided interest in the Common Elements held by the Owners other than Declarant (except to the extent a higher percentage of approval may be expressly required elsewhere herein or by applicable law), the Association shall not be entitled to:

Section 9.3.1. Partition or subdivide any Unit, except as provided in Section 2.3, provided that nothing contained herein or in Section 2.3 shall prevent Declarant from combining, partitioning or subdividing Units owned by Declarant, and further provided that such approval must include the approval of the Mortgagee holding a first lien Mortgage or first lien Deed of Trust on such Unit to be partitioned or subdivided;

Section 9.3.2. By act or omission, seek to abandon, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Project shall not be deemed a transfer within the meaning of this clause);

Section 9.3.3. Use hazard insurance proceeds for losses to any property on the Project (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction thereof, except as provided by applicable statute in case of substantial loss or damage to the Units and/or the Common Elements; and

Section 9.3.4. Change the pro rata interest or obligations of any Unit for the purpose of (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of

each Unit in the Common Elements; provided, however, that nothing herein shall prevent Declarant from redetermining and re-allocating between Units owned by Declarant the pro rata share of ownership in the Common Elements of such Units owned by Declarant which Declarant combines, partitions or subdivides prior to sale of such Units to a third party.

Section 9.4. Other Changes Requiring Mortgagee Approval. Without the prior written approval of one hundred percent (100%) of the Mortgagees, the Association shall not be entitled to:

Section 9.4.1. By act or omission, seek to abandon or terminate the Condominium Project, except for abandonment or termination of the Project provided by law or in the case of substantial destruction by fire or other casualty.

Section 9.4.2. By act or omission, seek to partition or subdivide the Common Elements.

Section 9.5. Mortgage Priority. Notwithstanding any language contained in this Declaration or the other Project Documents to the contrary, no Owner or other party shall have priority over any rights of the Mortgagee of any Unit pursuant to its Mortgage in the case of a distribution to the Owner of such Unit of insurance proceeds or condemnation awards for losses to or taking of all or a portion of such Unit and/or Common Elements.

Section 9.6. Compliance with FHLMC and FNMA Regulations. The Declarant intends that the Project shall comply with all requirements of the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA") pertaining to the purchase by FHLMC and/or FNMA of conventional home loans. Declarant and all Owners therefore agree that, notwithstanding anything to the contrary contained herein, in the event the Project or any of the Project Documents do not comply with the FHLMC and/or FNMA requirements, the Declarant and the Board shall have the power (on behalf of the Association and each and every Owner) to amend the terms of this Declaration and the Bylaws and/or to enter into any agreement with FHLMC and/or FNMA (or their designees) or the Mortgagees of the Units reasonably required by FHLMC and/or FNMA or the Mortgagees to allow the Project to comply with such requirements.

Section 9.7.  
Taxes, Assessments, and Charges Which May Become Liens. All taxes, assessments, charges which may become liens prior to any first lien Mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

## ARTICLE X.

### INSURANCE

Section 10.1. Association Liability Insurance. The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant and the agents and employees of each and the Owners and the respective family members, guests and invitees of the Owners against any liability incident to the ownership or use of the Common Elements, commercial spaces, if any, and public ways, and arising out of employment contracts of the Association, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured, and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners of the Association. The scope of the coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use. Coverage shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury, including death, and/or property damage.

Section 10.2. Master Hazard Insurance. Additionally, the Association shall obtain and continue in effect a master or blanket policy of multi-peril insurance covering all buildings, improvements, personal property and other Common Elements of the Project, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of replacement cost of all property covered by the policy. Any fixtures, equipment or other property within any Unit which are financed by a Mortgage held by FNMA shall also be covered by such policy. If there is a steam boiler in operation in connection with any Unit, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing minimum coverage in an amount not less than Fifty Thousand Dollars (\$50,000.00) per accident per location. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of one hundred percent (100%) of replacement cost of all improvements and other insurable property on the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The master policy of multi-peril insurance shall contain extended coverage and replacement costs endorsements as well as an inflation guard endorsement, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the improvements on the Project in the event of destruction and a decision not to rebuild pursuant to this Declaration. Such policies shall be in form and amount as may be determined by the Board, shall name as insured the Association, the Owners and Declarant (so long as Declarant is an Owner of



any Units), and all Mortgagees as their respective interests may appear, and shall provide that any proceeds be paid to the Association for the use and benefit of the Owners and Mortgagees as their interests may appear. Such policy shall not be required to insure the personal property or customized items within any individual Units, which shall be and remain the responsibility and risk of the Owners.

Section 10.3. Additional Association Insurance. The Association may purchase such other insurance as it may deem necessary, including, without limitation, plate-glass insurance, workman's compensation, directors, officers' liability, and errors and omissions insurance, and the Association shall purchase fidelity coverage against dishonest acts by any directors, officers, managers, trustees, employees or volunteers of the Association or the Managing Agent who are responsible for handling funds belonging to or administered by the Association. The fidelity bond insurance shall name the Association as the insured and shall provide coverage in an amount based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Managing Agent, as the case may be, at any given time during the term of each bond. In no event, however, shall the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate Assessments on all Units, plus reserve funds. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

Section 10.4. Insurance Premiums. Insurance premiums shall be a Common Expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Owner to obtain additional individual insurance.

Section 10.5. Personal Liability Insurance. In addition to the master policies which the Association shall carry, the Board shall have the power to require each Owner, at his sole cost and expense, to carry personal liability insurance covering damage to property or injury to the person of others within the Project resulting from negligence of the Owner or his agents, tenants, guests or invitees, in an amount up to, and including, One Hundred Thousand Dollars (\$100,000.00) for each occurrence.

Section 10.6. Waiver of Subrogation; Notice of Cancellation. All property and liability insurance carried by the Association or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, officers, and directors, and any Members, their guests, agents and employees. All policies of hazard insurance must contain or have attached the standard mortgage clause commonly accepted by private institutional mortgage investors in the area in which the Units are located. All insurance carried by the Association shall contain a provision requiring the insurer to notify all insureds named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

Section 10.7. Individual Insurance. Each Owner shall be responsible for insuring the contents and furnishings of his Unit and of the Limited Common Elements subject to his exclusive control, and for insuring the Owner's improvements, alterations, additions, appliances and fixtures not covered by the policies purchased by the Association. All policies of casualty insurance carried by each Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Board for the benefit of all the Owners as provided hereinabove.

Section 10.8. Future Laws. In the event that an insurance policy specifically designed to meet the insurance needs of condominium regimes hereafter becomes available in the State of Texas, the Board shall be authorized to obtain such a policy provided that the coverage afforded thereby at least equals the coverage provided by the policies enumerated in this Article X.

## ARTICLE XI.

### FIRE AND CASUALTY (CONSTRUCTION AND REPAIR)

Section 11.1. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project, in whole or in part, upon its destruction or repair. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead for the purpose of dealing with said Project upon its destruction as is hereinafter provided. As attorney-in-fact, the Association, by and through its President or any Vice President and Secretary or any Assistant Secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Any repair, reconstruction or replacement made of the improvement(s) shall be to substantially the same condition existing prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available unless the Owners agree not to rebuild in accordance with the provisions hereinafter set forth. The Association shall have full authority, right and power, as attorney-in-fact, to cause any repair and restoration of the improvement(s) permitted or required hereunder.

Without limitation on the generality of the foregoing, the Association as said attorney-in-fact shall have the full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to settle and compromise any and all claims under said insurance policies, to collect proceeds and to distribute the same to the Association, the Owners and their

respective Mortgagees (subject to the provisions hereof) as their interests may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Owners, the Association and the Project as shall be necessary or convenient to the accomplishment of the foregoing, and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit or for the liability of any Owner for occurrences therein not caused by or in connection with the Association's operation, maintenance or use of the Project.

Notwithstanding anything that may be contained herein to the contrary, the Association may enter into any insurance trust agreement with a trustee (the "Insurance Trustee") whereby the Insurance Trustee shall act as the Association's representative to negotiate losses under policies providing casualty or liability insurance. In the event the Association designates an Insurance Trustee, all owners irrevocably constitute and appoint the Insurance Trustee as their true and lawful attorney in their name, place and stead for the purpose of dealing with the Project upon its destruction, as provided in this Section 11.1, which Insurance Trustee shall have the same power and authority as attorney-in-fact as granted the Association in this Section 11.1.

Section 11.2. Reconstruction or Repair of Project. In the event of fire, casualty or other disaster involving substantial damage to the Project, within ten (10) days of receipt of determination of the amount of insurance proceeds available to the Association, the Association shall cause notice to be given of a special meeting of Members to be held not less than twenty (20) nor more than thirty (30) days from the giving of such notice. Such notice shall specify the amount of insurance proceeds available, the estimated cost of restoration and any other data deemed pertinent to the determination called for by this Section 11.2.

Section 11.2.1. Sufficient Proceeds. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Project, shall, subject to the provisions of Sections 11.2.3 and 11.2.4 hereinbelow, be applied to such reconstruction. Reconstruction of the Project, as used in this Section 11.2, means restoring the Project to substantially the same condition in which it existed immediately prior to the fire, casualty or other disaster, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Such reconstruction shall be caused to be accomplished by the Association or its duly authorized agents.

Section 11.2.2. Insufficient Proceeds. If the insurance proceeds are insufficient to reconstruct the Project, damage to or destruction thereof shall, subject to the provisions of Sections 11.2.3 and 11.2.4 hereinbelow, be promptly caused to be repaired and restored by the Association or its duly authorized agents, using proceeds of insurance, if any, on the Project for that

purpose, and the Owners shall be liable for the special Assessment or Assessments for any deficiency as hereinafter provided.

Section 11.2.3. Less than Two-Thirds Destruction. If less than two-thirds (2/3) of the Project [as determined by the vote or written consent of Members owning at least fifty-one percent (51%) of the Common Interest in the exercise of their sole discretion] is destroyed or substantially damaged by fire or any other disaster, then the Project shall be rebuilt or repaired.

Section 11.2.4. Two-Thirds or More Destruction. If two-thirds (2/3) or more of the Project [as determined by the vote or written consent of Members owning at least fifty-one percent (51%) of the Common Interest in the exercise of their sole discretion], is destroyed or substantially damaged by fire or any other disaster, and if the Members, by unanimous vote or written consent, do not voluntarily, within one hundred eighty (180) days after determination of the amount of the Association's insurance proceeds resulting from such destruction or damage, make provision for reconstruction (unless within such period the buy-out contemplated in this Section 11.2.4 is effected), the condominium regime shall be deemed to have been waived, and the Association shall take all action required under the Act to regroup and merge the filial estate with the principal property, whereupon:

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

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

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

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

Notwithstanding the foregoing provisions hereof, in the event of destruction or substantial damage to two-thirds (2/3) or more of the Project, the Owners may, by an affirmative vote of the

Members owning at least three-fourths (3/4) of the undivided Common Interest, at a meeting of the Members duly called for such purpose, and with the approval of either (1) at least sixty-six and two-thirds percent (66-2/3%) of the Mortgages [based upon one (1) vote for each Mortgage owned] or (2) Mortgagees holding first lien Mortgages on Units to which at least fifty-one percent (51%) of the undivided interest in the Common Elements applicable to Units covered by first lien Mortgages is allocated, whichever method requires the approval of a greater number of Mortgagees, elect to sell or otherwise dispose of the Project. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

Notwithstanding the foregoing provisions hereof, in the event that two-thirds (2/3) or more of the Project has been damaged and unanimous vote has not been obtained for reconstruction at the meeting held in accordance with the provisions of the first paragraph of this Section 11.2.4, the Association may, by affirmative vote of the Members owning at least three-fourths (3/4) of the undivided Common Interest at a meeting of the Members duly called for such purpose, elect to purchase all the ownership interests in the Project of those Owners not voting to rebuild. Such action will be binding upon the Association and all Owners, and it shall thereupon become the duty of the Association and every Owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect the sale and purchase. The purchase price for the ownership interest of each Owner so being purchased shall be payable to the Owner and the Owner's mortgagees as their interests shall appear and shall be an amount equal to the Owner's percentage interest in the Association's insurance proceeds plus an amount equal to the Owner's percentage interest in an amount equal to the then market value of the Project, considered as a whole, excluding such insurance proceeds and less the amount of any liens against the Project or any part thereof. In the event the parties are unable to agree upon the purchase price, the price shall be determined by appraisal as follows: The Association shall select one MAI designated appraiser to act for it; within thirty (30) days of the Association's appointment of an appraiser, the selling Owners shall appoint an MAI designated appraiser to act for them; forthwith the two appraisers acting together shall select a third independent MAI designated appraiser by mutual agreement; and the three appraisers by a vote of the majority of the group shall determine the purchase and sale price with respect to each Owner selling hereunder. All such purchases and sales shall be closed within sixty (60) days subsequent to the determination of the purchase and sale price as aforesaid, with the Association financing the same in accordance with Section 13.6 hereof. Within fifteen (15) days of the last such closing, the Association shall

cause to be held a special meeting of Members for the purpose of securing approval of reconstruction.

Section 11.3. Repair of Interior of Unit. Each Owner shall be responsible for the reconstruction, repair or replacement of that portion of the interior of his Unit which the Owner has installed, furnished or provided, including, but not limited to, any floor coverings, wall coverings, window shades, draperies, furniture, furnishings, decorative light fixtures, or other improvements, betterments and additions to his Unit, and all appliances located therein irrespective of whether or not such appliances are "built-in" to the Unit, except the original built-in appliances. Each Owner shall also be responsible for the costs not otherwise covered by insurance carried by the Association of any reconstruction, repair or replacement of any portion of the Project necessitated by his negligence or misuse or the negligence or misuse by his family, guests, agents, servants, employees, invitees or contractors and, further, each Owner shall, to the extent not covered by insurance proceeds collected by the Association, indemnify the Association and all other Owners against any such costs. In the event damage to all or any part of the interior of an Owner's Unit is covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of such damage upon receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof. In the event damage to all or any part of the interior of an Owner's Unit is not covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of his Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof.

Section 11.4. Application of Insurance Proceeds. As soon as possible after the occurrence of a casualty which causes damage to any part of the Project for which the Association has insurance coverage (hereinafter referred to as the "Casualty"), the Association shall obtain reliable and detailed cost estimates of the following:

Section 11.4.1. The cost of restoring all damage caused by the Casualty to the Common Elements (hereinafter referred to as the "Common Element Costs"); and

Section 11.4.2. The cost of restoring that part of the damage caused by the Casualty to each Unit which is or would be covered by insurance held by the Association without regard to the policy limits of such insurance (hereinafter referred to as the "Unit Costs"). All insurance proceeds available to the Association with respect to the Casualty shall first be applied to the payment of the actual Common Element Costs and the balance thereof, if any, shall thereafter be applied to the payment of the actual Unit Costs. However, if such insurance proceeds are not sufficient to cover such estimated costs, then a special Assessment or Assess-

ments shall be made against the Owners by the Association in the following manner:

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

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

If actual costs exceed such estimated costs, then an additional Assessment shall be made against the Owners by the Association in the above manner based upon actual costs.

## ARTICLE XII.

### EMINENT DOMAIN

Section 12.1. General Provisions. If all or any part of the Project is taken or threatened to be taken by condemnation, eminent domain, or by any other similar power, the Board and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Board shall give notice of the existence of such proceeding to all Owners and Mortgagees known to the Board. The expense of participation in such proceedings by the Board shall be considered a Common Expense. The Board is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other persons as the Board in its sole and exclusive discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board, acting as Trustee, and such damages or awards shall be applied or paid as provided herein.

Section 12.2. Common Elements; Limited Common Elements Not Subject to Exclusive Use. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements, or any Limited Common Elements that are not exclusively limited to the use of the Owner of one Unit (hereafter in this Section 12.2 only, all references to Limited Common Elements shall be deemed to be references only to such Limited Common Elements) the Board shall have the sole authority to determine whether to defend or resist any such proceeding; to make any settlement with respect

thereto; or to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking of Common Elements or Limited Common Elements, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to each Owner in proportion to his Common Interest. The Board may, if it deems advisable, call a meeting of the Association, at which meeting the Members, by a majority vote, shall decide whether to replace or restore as far as possible the Common Elements or such Limited Common Elements so taken or damaged.

Section 12.3. Taking of Less than Two-Thirds of Units and Limited Common Elements Subject to Exclusive Use. In the event that any eminent domain proceeding results in the taking of or damage to one or more, but less than two-thirds (2/3) of the total number of Units or those Limited Common Elements reserved for the exclusive use of the Owner of one Unit (as determined by the vote or written consent of Members owning at least fifty-one percent (51%) of the Common Interest in the exercise of their sole discretion) (hereinafter in this Section 12.3 only, all references to Limited Common Elements shall be deemed to be references only to such Limited Common Elements), or both, then the damages and awards for such taking and the payment thereof shall be determined in accordance with the following:

Section 12.3.1. The Board shall determine which of the Units damaged by such taking may be made tenantable and which Limited Common Elements may be made usable for the purposes set forth in this Declaration.

Section 12.3.2. The Board shall determine whether it is reasonably practicable to operate the remaining Units and Limited Common Elements (including those which may be made tenantable or usable) in the manner provided in this Declaration.

Section 12.3.3. If the Board determines that it is not reasonably practicable to operate such remaining Units and Limited Common Elements, and if one hundred percent (100%) of the Mortgagees and Owners consent to a termination of the condominium regime, then the Project shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all Owners, as tenants-in-common, in their respective Common Interests, and the condominium regime hereby established shall terminate.

Section 12.3.4. If the Board determines that it will be reasonably practicable to operate such remaining Units and Limited Common Elements, or if one hundred percent (100%) of the Mortgagees and Owners do not consent to a termination of the condominium regime, then the damages and awards made with respect to each Unit and Limited Common Element which has been determined to be capable of being made tenantable or usable shall



be applied to the repair and reconstruction thereof. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of those Units which are being repaired or reconstructed so as to be made tenantable and against those Owners who have the exclusive right of use of the Limited Common Elements being made usable. With respect to those Units and Limited Common Elements which may not be made tenantable or usable, the award made with respect thereto shall be paid to the Owner who owns such Units or has the exclusive right of use of the Limited Common Elements, or to their Mortgagee, as their interests may appear, and the remaining portion of such Units and Limited Common Elements, if any, shall become a part of the Common Elements and the repair and use thereof shall be determined by the Board. Those Units which may not be made tenantable shall no longer be a part of the Project and the Common Interest appurtenant to each remaining Unit of the Project shall be adjusted by the Board, in such manner as it may determine, with the approval of Mortgagees holding first lien Mortgages on Units to which at least fifty-one percent (51%) of the undivided interest in the Common Elements applicable to Units covered by first lien Mortgages is allocated, to distribute the ownership of the undivided interests in the Common Elements among the reduced number of Owners. After making such adjustment the Board will cause an instrument reflecting the new Common Interest appurtenant to each Unit to be duly recorded.

Section 12.4. Taking in Excess of Two-Thirds of Units and Limited Common Elements Subject to Exclusive Use. If the entire Project is taken, or two-thirds (2/3) or more of the Units and Limited Common Elements subject to exclusive use (as determined by the vote or written consent of Members owning at least fifty-one percent (51%) of the Common Interest in the exercise of their sole discretion) are taken or damaged by such taking, and if one hundred percent (100%) of the Mortgagees and Owners consent to a waiver of the condominium regime, all damages and awards shall be paid to the accounts of the Owners thereof (or the Owners entitled to such exclusive use), in proportion to their Common Interests, and the condominium regime hereby established shall terminate upon such payment. Upon such termination, the Units, Common Elements, and Limited Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interests by all Owners, as tenants-in-common, in their respective Common Interests.

Section 12.5. Taking in Excess of Two-Thirds of Units and Limited Common Elements Subject to Exclusive Use and Repair Required. If the entire Project is taken, or two-thirds (2/3) or more of the Units and Limited Common Elements subject to exclusive use (as determined by the vote or written consent of Members owning at least fifty-one percent (51%) of the Common Interest in the exercise of their sole discretion) are taken or damaged by such taking and if one hundred percent (100%) of the Mortgagees and Owners do not consent to a termination of the condominium

regime, the Project shall be repaired or reconstructed in accordance with the provisions of Section 12.3.4 hereof.

Section 12.6. Payment of Awards and Damages. Any damages or awards provided in this Article XII to be paid to or for the account of any Owner by the Board, acting as Trustee, shall be applied first to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any Mortgages; thirdly, to the payment of any unpaid Common Expenses or special assessments charged to or made against the Unit; and finally to the Owner of such Unit.

### ARTICLE XIII.

#### GENERAL PROVISIONS

Section 13.1. Enforcement. The Association, any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens, and charges now or hereafter imposed by the Project Documents, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court; provided, however, that an individual Owner shall have no right to enforce the collection of any Assessment levied against any other Owner under Article IV above. Failure by the Association, any Owner, or any such other Person to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.2. Invalidity of Any Provision. The provisions of the Project Documents shall be liberally construed to effectuate its purpose of creating a uniform plan for the use, operation and maintenance of the Project. Should any provision of the Project Documents or any article, paragraph, sentence, clause, phrase or word, or the application thereof in any circumstances be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions, paragraphs, sentences, clauses, phrases, or words shall remain unaffected and in full force and effect.

Section 13.3. Encroachment and Protrusion Easements. Each Unit within the Project is hereby declared to have an easement over all adjoining Units and the Common Elements for the purpose of accommodating any encroachment and/or protrusion due to engineering errors, errors in original construction, settlement, shifting or any movement of any Building, or any other cause, and regardless of any variances actually existing on the date hereof with respect to the boundaries of the Units. There shall be valid easements for the maintenance of said encroachments and/or protrusions as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, protrusion, settlement, movement or shifting; provided, however, that in no event shall a valid

easement for encroachment or protrusion be created in favor of an Owner or Owners if said encroachment or protrusion occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments and/or protrusions over adjoining Units or Common Elements shall be permitted and that there shall be a valid easement for the maintenance of said encroachments and/or protrusions so long as they shall exist. Such encroachments or protrusions shall not be considered to be encumbrances either on the Common Elements or on the Unit for purposes of marketability of title or otherwise.

Section 13.4. Termination of Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner or his agent, contractor or subcontractor shall be the basis for the filing of a lien against either the Common Elements or the Unit of any other Owner not expressly consenting to or requesting the same. Each Owner shall indemnify and hold harmless each of the other Owners from and against any and all liability arising from any such claims or liens against the Units of any other Owners or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the indemnifying Owner's Unit at such indemnifying Owner's request. Labor performed or materials furnished for the Common Elements, if duly authorized by the Managing Agent or the Board in accordance with the Declaration or Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each Unit in the Project.

Section 13.5. Revocation or Amendment to Declaration. This Declaration shall not be revoked unless all of the Owners and Mortgagees unanimously consent and agree to such revocation by instrument(s) duly recorded. This Declaration and the Map, Articles, Bylaws, Rules and Regulations and any other Exhibits attached hereto and thereto shall not be amended in any material fashion with respect to the following areas unless the Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements and Mortgagees holding first lien Mortgages on Units to which fifty-one percent (51%) of the undivided interest in the Common Elements applicable to Units covered by first lien Mortgages is allocated, consent and agree to such amendment: any material provisions establishing, providing for, governing or regulating voting; assessments, assessment liens or subordination of such liens; reserves for maintenance, repair and replacement of the Common Elements or Units, if applicable; insurance or fidelity bonds; rights to use the Common Elements; responsibility for maintenance and repair of the several portions of the Project; expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; boundaries of the Units; the Common Interest; convertability of Units into Common Elements and Common Elements into Units; the leasing of Units; the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit; and any provisions for the express benefit of Mortgagees or Insurers. Notwithstanding the

foregoing, before the first annual meeting of the Association, Declarant may, with the written consent of any Mortgagee of any Unit which would be affected (but without the consent of any Owner) amend this Declaration, Map, Articles, Bylaws, Rules and Regulations and any other exhibits attached hereto and thereto. Notwithstanding the foregoing, this Declaration may not be amended to eliminate any rights expressly reserved herein unto Declarant except by an instrument executed and acknowledged by Declarant. Further, notwithstanding the foregoing, Declarant reserves the right to amend the Map, from time to time, to conform the same according to the actual location of any of the improvements and to establish, vacate, and relocate easements, access road easements and on-site parking areas. An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any Mortgagee who receives a request to consent to an addition or amendment to the Project Documents and who does not deliver or deposit in the mail a negative response to such request within thirty (30) days after receipt of such request shall be deemed to have consented to such request.

Section 13.6. Financing of Purchase of Unit by Association. In the event the Association should acquire a Unit at foreclosure or pursuant to Section 11.2.4, such acquisition by the Association may be made from the working capital of the Association and common charges in the hands of the Association, or if such funds are insufficient, the Association may levy a special Assessment or Assessments against each Owner in proportion to his Common Interest, as a Common Expense, or the Association, in its discretion, may borrow money to finance the acquisition of such Unit; provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Unit, together with the interest in the Common Elements appurtenant thereto, so to be acquired by the Association.

Section 13.7. Owner's Right and Obligation to Maintain, Repair and Decorate. Each Unit Owner shall at all times, at his sole cost and expense, maintain in good order and repair his Unit and any Limited Common Elements required by the Project Documents to be maintained and repaired by the Unit Owner, keeping the same in good condition. Additionally, each Owner shall, at his sole cost and expense, maintain, repair and replace as necessary any separate air conditioning and heating units which service only his Unit. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Unit, provided that such action does not impair the structural integrity, weaken the support, or otherwise adversely affect the Building or any Common Element, and provided that all such action is performed in a good and workmanlike manner. In the event an Owner fails to maintain and repair his Unit as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify such Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event such Owner fails to complete such maintenance and repair within said period, the Board may cause (but shall not have the obligation to do so) such work to be done and may

specialy assess the cost thereof to such Owner which said cost shall be payable on demand and, if necessary, the Board may create a lien against his Unit for the amount thereof.

Section 13.8. Easements for Owner's Maintenance and Repair. Each Owner shall have the following easements to, through and over the Common Elements to the extent necessary for such Owner's maintenance, repair and replacement:

Section 13.8.1. To paint, remove and replace any finish on the interior surface of any Limited Common Element appurtenant to his Unit;

Section 13.8.2. To install, repair, maintain, remove and/or replace any plumbing, heating, cooling, lighting, cooking or other fixtures or equipment which are a part of his Unit or which would become a part thereof when installed in any bearing wall, floor, ceiling or roof; provided, however, such installation, repair, maintenance, removal and/or replacement shall not impair the structural integrity of the Building, nor shall it adversely affect any adjacent Unit, nor shall it alter the external appearance of the Building (unless the Association consents thereto); and

Section 13.8.3. To drive and remove nails, screws, bolts and the like into and from bearing walls, floors, ceiling and roof; provided, however, such action shall not impair the structural integrity of the Building, nor shall it adversely affect any adjacent Unit, nor shall it alter the external appearance of the Building (unless the Association consents thereto).

Section 13.9. Limitation of Restrictions on Declarant. Declarant is performing certain work in connection with the development and marketing of the Property as a condominium regime. The completion of that work and the sale, rental, and other disposition of said Units is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in the Project Documents shall be understood or construed to:

Section 13.9.1. Prevent Declarant, its contractors, sub-contractors, or other representatives from doing on or to the Project or any Unit, whatever is reasonably necessary or advisable in connection with the completion of the work;

Section 13.9.2. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and disposing of the same in parcels by sale, lease or otherwise;

Section 13.9.3. Prevent Declarant from conducting on any part of the Project its business of completing the work and of establishing a plan of Unit ownership and of disposing of said Project in Units by sale, lease or otherwise; or

Section 13.9.4. Prevent Declarant from maintaining such sign or signs on any part of the Project as may be necessary for the sale, lease or disposition thereof.

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

Section 13.10. Restriction on Declarant. The Declarant shall not enter into any contract or lease that shall be binding upon the Association following transfer of control of the Association to the Owners unless such contract or lease may be terminated by the Association, without cause and without the requirement of payment of a termination fee or penalty, upon not more than ninety (90) days notice to the other party thereto.

Section 13.11. Termination of Any Responsibility of Declarant. Declarant may at any time, or from time to time, sell, assign or transfer all or any part of its rights hereunder and/or its rights, title and interest in the Project to any Person or Persons who shall thereafter have such rights and powers of Declarant as are contained in the Project Documents. In the event Declarant shall convey all of its right, title and interest in and to the Project to any Person or Persons, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such Person or Persons shall be obligated to perform all such duties and obligations of the Declarant.

Section 13.12. Owners' Compliance with Project Documents. Each Owner, tenant or occupant of a Unit and their guests and invitees shall comply with the provisions of the Project Documents and all lawful decisions and resolutions of the Association or its duly authorized representative. Failure to comply with any such provisions of the Project Documents, or any such decisions, or resolutions, shall be grounds for an action by the Association and any aggrieved Owner to recover sums due for damages (including costs and reasonable attorneys' fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

Section 13.13. Legal Intent. It is the intent of Declarant, the Association and the Owners that the Project Documents be in strict compliance with applicable usury laws of the State of Texas as may be amended or modified by any applicable federal laws. In furtherance thereof, said parties stipulate and agree that none of the terms and provisions contained in the Project Documents shall ever be construed to create a contract to pay for

the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable laws of the State of Texas as may be amended or modified by any applicable federal laws. The Owners or other parties now or hereafter becoming liable for payment of sums owing under the terms of the Project Documents shall never be liable for unearned interest on any of said sums and shall never be required to pay interest at a rate in excess of the maximum interest that may be lawfully charged under applicable laws of the State of Texas as may be amended or modified by any applicable federal laws, and the provisions of this Section shall control over all other provisions of the Project Documents in conflict herewith. In the event that the Declarant, the Association or any of its designated agents shall collect monies which are deemed to constitute interest at a rate in excess of that permitted to be charged by applicable laws of the State of Texas as may be amended or modified by any applicable federal laws, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to the Owner or other party so paying said monies upon such determination.

Section 13.14. Conflict of Project Documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Map, Articles, Bylaws, and Rules and Regulations of the Association.

Section 13.15. Term of Declaration and Covenant Running with the Property. The covenants, conditions, and restrictions of this Declaration shall run with, benefit and bind the Property and the Project, and shall inure to the benefit of and shall be enforceable by the Association, its respective legal representatives, successors-in-interest and permitted assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions, and restrictions shall automatically be extended for successive periods of ten (10) years, unless an instrument, signed by all of the then Owners, and all of the Mortgagees, has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 13.16. Statutes and Laws of State of Texas. The provisions of this Declaration shall be in addition and supplemental to the Texas Condominium Act and to all other applicable provisions of law.

Section 13.17. Number and Gender. Unless the context otherwise requires, whenever herein the singular is used, the same shall be held and construed to include the plural where appropriate, and words of any gender shall be held and construed to include such other gender where appropriate.

Section 13.18. References. All references to "Article", "Articles", "Section", or "Sections" contained herein are, unless specifically indicated otherwise, references to Articles and Sections of this Declaration. Further, the headings of the several Articles and Sections of this Declaration are inserted solely for the convenience of reference and are not a part of and

are not intended to govern, limit, affect, enlarge, amplify, modify or aid in the construction of any term or provision of this Declaration.

Section 13.19. Exhibits. All references to "Exhibits" contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes.

Section 13.20. No Representations and Warranties. No representations or warranties of any kind, express or implied have been given or made by Declarant or its agents or employees in connection with the Project or any portion thereof, its physical condition, zoning or other legal classification, fitness for intended use, nor in connection with the subdivision, development, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a Condominium except as specifically set forth in the Project Documents or the condominium unit sales contract.

Section 13.21. No Dedication Implied. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Project to the general public or for any public use or purpose whatsoever.

Section 13.22. Description of Condominium Unit. Every deed, lease, mortgage or other instrument may legally describe a Unit by its Unit number and Building symbol or designation as shown on the Map, and by a reference to this recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect the General Common Elements.

#### ARTICLE XIV.

##### NOTICES

Any communication or notice of any kind permitted or required herein may be delivered as provided in this Declaration and shall be in writing and may be served, as an alternative to personal service, by mailing same as follows:

If to Declarant:

Miller Condominium Corp.  
5519 Arapaho Road,  
Suite 200  
Dallas, Texas 75248

With a copy thereof to:

Laura M. Keith  
Geary, Stahl & Spencer  
2800 One Main Place  
Dallas, Texas 75250



If to Owner:

To street address of his Condominium or at such other address as said Owner may from time to time designate in writing to the Association

If to the Association:

To Woodhaven Condominiums Homeowners Association, Inc. at the street and address of the Project

If to the Board, any member of the Board, or any officer of the Association

To that Person by his or its title at the street address of the Project

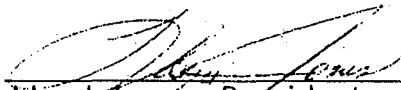
All notices or demands to be served by mail shall be mailed by registered or certified mail, with postage thereon fully prepaid. Service shall be deemed to be complete on the actual date of delivery as shown on the addressee's registered or certified mail receipt or at the expiration of two (2) business days after such mailing, whichever first occurs.

The undersigned, being the Declarant herein, has executed this Declaration on August 1<sup>st</sup>, 1982.

DECLARANT:

MILLER CONDOMINIUM CORP.

By:

  
Lloyd Jones, President

THE STATE OF TEXAS

§

COUNTY OF

Dallas

§

§

BEFORE ME, the undersigned authority, on this day personally appeared LLOYD JONES, President of MILLER CONDOMINIUM CORP., a Texas corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he 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 this 19<sup>th</sup> day of

August, 1982

NAME:

Rose A. Kupper  
Rose A. Kupper  
(Print or Type Name)

NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

My Commission Expires:

7/12/86

EXHIBIT "A"

BEING a tract of land out of the Robert Wilburn Survey, Abstract No. 1580, situated in part of Dallas City Block No. 8220 in the City of Dallas, Dallas County, Texas, and being the tract known as Woodhaven Apartments as recorded in Volume 79038, Page 284, Map Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a point on the Northwesternly line of Arapaho Road (a 100 foot right-of-way), said point being Southwesterly 625.00 feet from the West line of Preston Road (a 100 foot right-of-way), said point also being in a curve to the left running in a Southwesterly direction and having a central angle of  $8^{\circ} 36' 01''$ , a radius of 1195.92 feet and a tangent of South  $55^{\circ} 34' 14''$  West;

THENCE: Along said curve and the said Northwesternly line of Arapaho Road the following courses and distances: 179.51 feet to the end of said curve;

THENCE S  $46^{\circ} 58' 13''$  West, 110.26 feet to the beginning of a curve to the right having a central angle of  $32^{\circ} 58' 01''$  and a radius of 1095.92 feet;

THENCE along said curve 630.58 feet to the end of said curve;

THENCE: Leaving the said Northwesternly line of Arapaho Road North  $15^{\circ} 36' 00''$  East, 192.06 feet to the beginning of a curve to the right having a central angle of  $22^{\circ} 20' 00''$  and a radius of 498.22 feet;

THENCE: Along said curve 194.20 feet to the end of said curve;

THENCE: North  $37^{\circ} 56' 00''$  East 246.19 feet to the beginning of a curve to the right having a central angle of  $10^{\circ} 00'$  and a radius of 1011.10 feet;

THENCE: Along said curve 176.47 feet to the end of said curve;

THENCE: North  $47^{\circ} 56' 00'$  East 182.52 feet to the beginning of a curve to the left having a central angle of  $0^{\circ} 00' 46''$  and a radius of 498.22 feet;

THENCE: Along said curve 0.11 feet to the end of said curve;

THENCE: South  $34^{\circ} 25' 46''$  East 409.14 feet to the Point of Beginning and containing 6.389 Acres of land.

## EXHIBIT "B"

### RULES AND REGULATIONS FOR WOODHAVEN CONDOMINIUMS

1. Any sidewalks, driveways, entrances, halls and passageways which are General Common Elements or Limited Common Elements shall not be obstructed or used by any Owner for any other purpose than ingress to and egress from the Units.

2. No article shall be placed on or in any of the General Common Elements except for those articles of personal property which are the common property of all of the Unit Owners.

3. Owners, members of their families, their guests, residents, invitees, tenants or lessees shall not use sidewalks, driveways, entrances, halls and passageways as a play area(s).

4. No vehicle belonging to or under the control of any Owner or a member of the family or a guest, invitee, tenant, lessee, or employee of a Unit Owner shall be parked in such manner as to impede or prevent ready access to any entrance to or exit from the Project. Vehicles shall be parked within designated parking areas only.

5. No decoration or article shall be placed upon and no work of any kind shall be done upon the exterior building walls or upon the General Common Elements by any Owner. Such decoration and work is the responsibility of the Association. No changes can be made in the Limited Common Elements except with prior written approval of the Board of Directors.

6. No Owner, resident or lessee shall install wiring for electrical or telephone installation or for any other purpose, nor shall any television or radio antennae or machines be installed on the exterior of the Project or be installed in such a manner that they protrude through the walls or the roof of any Building or are otherwise visible from the ground, except as may be expressly authorized in writing by the Association.

7. Use of any facilities of the Project will be made in such manner as to respect the rights and privileges of other Owners.

8. Owners and occupants shall exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises, and in using or playing or permitting to be used or played musical instruments, radios, phonographs, television sets, amplifiers and any other instruments or devices in such manner as may disturb or tend to disturb Owners, or occupants of other Units.

9. All trash must be placed in sealed bags or sealed containers prior to being put in an approved disposal area.

10. Animals are restricted to domestic pets only and must be kept in such a manner so as not to disturb the other Owners, and shall not be kept, bred or maintained for any commercial purposes. If an animal becomes obnoxious to other Owners, the Owner or person having control of the animal shall be given a written notice by the Board of Directors to correct the problem, or if not corrected, the Owner, upon written notice, shall be required to remove the animal. The written notices provided for herein shall be issued by the Managing Agent, or, if there is no Managing Agent, then the Board of Directors. No animals are allowed on or about the swimming pool premises or tennis courts. No domestic animal is permitted outside of a Unit unless on a leash and accompanied by a member of the Association or his agent. The Owner of any animal shall and does hereby indemnify all other Owners, the Association and the Board and agrees to hold each of them harmless from and against any and all cost, expense or liability of any kind or character whatsoever arising from or growing out of his having such animal within the Project. Any inconvenience, damage or injury caused by such animal shall be the sole and exclusive responsibility of the Owner to whom such animal belongs.

11. The Association assumes no liability for, nor shall it be liable for, any loss or damage to articles stored in the storage areas. Any damage to the General Common Elements or common personal property caused by the children of an Owner or their guests or the guests of a Unit Owner shall be repaired at the expense of that Owner.

12. The Managing Agent, or if there is no Managing Agent, then the Board of Directors, shall retain a passkey to each Unit. If an Owner shall alter any lock or install a new lock on any door leading into the Unit, the Owner shall provide a key for the Managing Agent's or the Board of Director's use.

13. All draperies or drapery linings or shutters or blinds visible from the exterior of any Unit shall be of a neutral, white or off-white color. No window shall be covered with aluminum foil or similar material.

14. It is prohibited to hang garments, rugs, or any other items from the windows, patios, balconies or any of the facades of the Buildings. No exterior clotheslines shall be erected, and there shall be no outside laundering or drying of any garments.

15. No Owner shall modify or alter in any way the structure or appearance of any patio or balcony area. All patios and balconies shall be kept in clean and neat condition, free of debris and refuse. Patios and balconies shall not be used for storage purposes nor shall any Owner fence in, wire in or in any other way enclose any such area. If an Owner allows the patio or balcony appurtenant to his Unit to become cluttered or unsightly in any manner, he shall be given notice of such fact by the Board of Directors or Managing Agent, and shall be required to correct such condition

within five (5) days of the date of notice and if he fails to do so, then the Board of Directors or Managing Agent may correct such discrepancy (including the removal of any unsightly items) and/or repair or refurbish the patio or balcony at the Owner's expense.

16. No glass bottles, or glasses or similar items made of glass shall be permitted in the pool area. Alcoholic beverages shall be allowed only in the pool area and shall not be allowed in any other part of the General Common Elements.

The foregoing Rules and Regulations are subject to amendment and to the promulgation of further rules and regulations.

WOODHAVEN CONDOMINIUMS

"EXHIBIT C"

% OWNERSHIP

| <u>UNIT #</u> | <u>% OWNERSHIP</u> | <u>UNIT #</u> | <u>% OWNERSHIP</u> |
|---------------|--------------------|---------------|--------------------|
| 101           | .66                | 304           | .66                |
| 102           | .66                | 305           | .80                |
| 103           | .66                | 306           | .80                |
| 104           | .66                | 307           | .80                |
| 105           | .80                | 308           | .80                |
| 106           | .80                | 309           | .66                |
| 107           | .80                | 310           | .66                |
| 108           | .80                | 311           | .66                |
| 109           | .66                | 312           | .66                |
| 110           | .66                | 401           | .49                |
| 111           | .66                | 402           | .71                |
| 112           | .66                | 403           | .49                |
| 201           | .66                | 404           | .71                |
| 202           | .66                | 405           | .49                |
| 203           | .66                | 406           | .71                |
| 204           | .66                | 407           | .49                |
| 205           | .80                | 408           | .71                |
| 206           | .80                | 501           | .66                |
| 207           | .80                | 502           | .66                |
| 208           | .80                | 503           | .66                |
| 209           | .66                | 504           | .66                |
| 210           | .66                | 505           | .80                |
| 211           | .66                | 506           | .80                |
| 212           | .66                | 507           | .80                |
| 301           | .66                | 508           | .80                |
| 302           | .66                | 509           | .66                |
| 303           | .66                | 510           | .66                |

UNIT #                      % OWNERSHIP

|      |     |
|------|-----|
| 511  | .66 |
| 512  | .66 |
| 601  | .49 |
| 602  | .71 |
| 603  | .49 |
| 604  | .71 |
| 605  | .49 |
| 606  | .71 |
| 607  | .49 |
| 608  | .71 |
| 701  | .80 |
| 702  | .80 |
| 703  | .80 |
| 704  | .80 |
| 801  | .66 |
| 802  | .66 |
| 803  | .66 |
| 804  | .66 |
| 805  | .66 |
| 806  | .66 |
| 807  | .66 |
| 808  | .66 |
| 901  | .49 |
| 902  | .71 |
| 903  | .49 |
| 904  | .71 |
| 905  | .49 |
| 906  | .71 |
| 907  | .49 |
| 908  | .71 |
| 1001 | .49 |
| 1002 | .71 |
| 1003 | .49 |
| 1004 | .71 |

UNIT #                      % OWNERSHIP

|      |     |
|------|-----|
| 1005 | .49 |
| 1006 | .71 |
| 1007 | .49 |
| 1008 | .71 |
| 1101 | .49 |
| 1102 | .71 |
| 1103 | .49 |
| 1104 | .71 |
| 1105 | .49 |
| 1106 | .71 |
| 1107 | .49 |
| 1108 | .71 |
| 1201 | .49 |
| 1202 | .71 |
| 1203 | .49 |
| 1204 | .71 |
| 1205 | .49 |
| 1206 | .71 |
| 1207 | .49 |
| 1208 | .71 |
| 1301 | .49 |
| 1302 | .71 |
| 1303 | .49 |
| 1304 | .71 |
| 1305 | .49 |
| 1306 | .71 |
| 1307 | .49 |
| 1308 | .71 |
| 1401 | .49 |
| 1402 | .71 |
| 1403 | .49 |
| 1404 | .71 |
| 1405 | .49 |
| 1406 | .71 |



| <u>UNIT #</u> | <u>% OWNERSHIP</u> |
|---------------|--------------------|
| 1407          | .49                |
| 1408          | .71                |
| 1501          | .49                |
| 1502          | .71                |
| 1503          | .49                |
| 1504          | .71                |
| 1505          | .49                |
| 1506          | .71                |
| 1507          | .49                |
| 1508          | .71                |
| 1601          | .49                |
| 1602          | .71                |
| 1603          | .49                |
| 1604          | .71                |
| 1605          | .49                |
| 1606          | .71                |
| 1607          | .49                |
| 1608          | .71                |
| 1701          | .49                |
| 1702          | .71                |
| 1703          | .49                |
| 1704          | .71                |
| 1705          | .49                |
| 1706          | .71                |
| 1707          | .49                |
| 1708          | .71                |
| 1801          | .49                |
| 1802          | .71                |
| 1803          | .49                |
| 1804          | .71                |
| 1805          | .49                |
| 1806          | .71                |
| 1807          | .49                |
| 1808          | .71                |