

**CONDOMINIUM  
RECORDS**

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WATERFALL CROSSING JOINT VENTURE

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DECLARATION AND MASTER DEED

FOR

WATERFALL CROSSING CONDOMINIUMS

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DATED: June 18, 1980

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NOTICE - CERTAIN PROVISIONS OF THIS INSTRUMENT ARE  
SUBJECT TO ARBITRATION UNDER THE TEXAS GENERAL ARBITRATION  
ACT, ARTICLES 224 THROUGH 238-b, TEXAS REVISED CIVIL STATUTES  
ANNOTATED, AS AMENDED.

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	DEFINITIONS	2
ARTICLE II	PROPERTY SUBJECT TO THIS DECLARATION	6
2.01	Description and Ownership of Project and Apartments	6
2.02	Parking Spaces	6
2.03	Patios	6
2.04	Ownership of Common Elements	7
2.05	Alteration of Apartments	7
2.06	Easements	8
2.07	Encroachments	8
2.08	Sale of Interest in Common Elements	9
2.09	Addition of the Additional Property to the Project	9
ARTICLE III	ORGANIZATION AND MANAGEMENT	9
3.01	The Board of Directors	9
3.02	Voting	10
3.03	Election, Tenure and Proceedings of Board of Directors	10
3.04	Consent of Owners in Lieu of Meeting	12
3.05	Delegation	12
3.06	Powers and Duties of Board of Directors	12
3.07	Additional Rights, Powers and Duties of the Board	15
3.08	Board Powers, Exclusive	18
3.09	Membership in the Association	18
3.10	Limited Liability of the Board and the Owners	18
ARTICLE IV	ASSESSMENTS - MAINTENANCE FUND	19
4.01	Estimated Cash Requirements; Assessments	19
4.02	Omission of Assessments	20
4.03	Detailed Records	20
4.04	Commencement of Payment of Assessments; Taxes	20
4.05	Maintenance Fund	21
4.06	No Exemption from Liability	21
4.07	Default in Payment of Assessments	22
4.08	Payment of Assessments Upon Sale or Conveyance of an Apartment	25
ARTICLE V	PROVISIONS WITH RESPECT TO THE APARTMENTS, THE COMMON ELEMENTS AND MORTGAGES	25
5.01	Each Owner's Obligation to Repair	25
5.02	Alterations, Additions and Improvements	26
5.03	Restrictions on Use of Apartments and Common Elements	27
5.04	Liability of Owners for Negligence	28
5.05	Rules of the Board	29
5.06	Abatement of Violations	29
5.07	Advances, Powers to Enforce Declaration of Owners and Mortgages	30
5.08	Failure of the Board to Insist on Strict Performance; No Waiver	30

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28

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DECLARATION AND MASTER DEED  
FOR  
WATERFALL CROSSING CONDOMINIUMS  
PHASE I (68 UNITS)  
(with Deed of Trust to Secure Assessments)

THIS DECLARATION AND MASTER DEED made this 18th day of June, 1980, by WATERFALL CROSSING JOINT VENTURE, a joint venture composed of Dondi Investment Corporation and Woodstream Village Corporation, both Texas corporations ("Developer"), pursuant to the provisions of the Texas Condominium Act, Article 1301a of the Texas Revised Civil Statutes (the "Act"), for the purpose of submitting the hereinafter described real property and the improvements located thereon to a condominium regime:

W I T N E S S E T H :

WHEREAS, Developer is the owner of certain real property locally known as "The Waterfall Crossing Condominiums" consisting of approximately 4.3 acres of land (the "Land") located in Dallas County, Texas, as more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes, together with seventeen (17) residential buildings (the "Buildings") containing a total of sixty-eight (68) apartment units, covered and uncovered parking areas, and certain other improvements located thereon (such real property and improvements located thereon being sometimes hereinafter called the "Project"), as more particularly described on Exhibit "A", attached hereto and made a part hereof for all purposes; and

WHEREAS, it is the desire and intention of Developer, by recording this Declaration and Master Deed, to establish a Condominium Project (as defined in the Act) to be known as The Waterfall Crossing Condominiums under the provisions of the Act and to impose upon the Project mutually beneficial

80122 J181

24

restrictions under a general plan for the benefit of all of the condominium apartments contained therein and the owners thereof.

NOW, THEREFORE, Developer does, upon the recording hereof, establish the Project as a Condominium Project under the Act and does hereby declare that the Project shall, after such establishment, be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved and in any other manner utilized, subject to the provisions of the Act and to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration and Master Deed, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into CONDOMINIUMS, and all of which shall run with the land and shall be binding on all parties (including Owners, as hereafter defined) having or acquiring any right, title, or interest in the Project or any part thereof, and shall be for the benefit of each Owner of any portion of the Project, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the Owners thereof.

#### ARTICLE I

#### DEFINITIONS

Certain terms as used in this Declaration shall be defined as follows; unless the context clearly indicates a different meaning therefor:

"Act" shall mean the Texas Condominium Act, Article 1301a of the Texas Revised Civil Statutes, and as the same may be amended from time to time. 80122 3185

"Additional Property" shall mean the land adjacent to the Property situated in the City of Richardson, Dallas County, Texas, containing approximately 5 acres, and being more particularly described on Exhibit "B", attached hereto and made a part hereof for all purposes.



"Apartment" shall mean an enclosed space consisting of one (1) or more rooms occupying all or part of a floor in a building of one (1) or more floors or stories regardless of whether it is designed for a residence or for any other type of independent use, provided it has a direct exit to a thoroughfare or to common space leading to a thoroughfare. Each Apartment shall be the element of a Condominium which is not owned in common with the Owners of other Condominiums in the Project. Each Apartment is identified in a diagrammatic floor plan of the building in which it is situated as shown on the Plan and shall consist of a fee simple interest bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors thereof (including any covered parking space allocated to any Apartment), and an Apartment includes both the portions of the building so described and the air space so encompassed. Heating or air conditioning equipment serving an Apartment exclusively shall be a part of such Apartment.

"Association" shall mean The Waterfall Crossing Condominium Association, a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act, of which all Owners shall be members and through which the Owners shall act as a council of co-owners (as defined in the Act), which corporation shall administer the operation and management of the Project as a Condominium Project.

80122 3186

"Board of Directors" or "Board" shall mean the governing body of the Association, elected pursuant to the Bylaws of the Association.

"General Common Elements" shall mean and include the following:

- (i) the Land;
- (ii) the foundations, bearing walls, perimeter walls and columns;
- (iii) roofs, halls, lobbies, stairways, and entrances and exits or communication ways;
- (iv) the compartments or installations of central services such as central air-conditioning and heating, power, light, electricity, telephone, gas, cold and hot water, plumbing, reservoirs, water tanks and pumps, incinerators and the like, and all similar devices and installations existing for common use;
- (v) the premises and facilities, if any, used for the maintenance or repair of the Condominium Project;
- (vi) all common recreational facilities such as the clubhouse building, swimming pool and the grounds, yards and walkways, and all streets and thoroughfares on the Land;
- (vii) greens, gardens, balconies and patios (subject to the provisions of Section 2.03 hereof), storage sheds, service streets and parking areas; and
- (viii) all other elements desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Project.

"Common Elements" shall mean both the General Common Elements and the Limited Common Elements.

"Condominium" shall mean the entire estate in the real property owned by any Owner, consisting of an undivided interest in the General Common Elements, any Limited Common Elements allocated to his Apartment, and ownership of a separate interest in an Apartment.

"Developer" shall mean Waterfall Crossing Joint Venture, a joint venture, its successors and any assignee, other than an Owner, who shall receive by assignment from the said Waterfall Crossing Joint Venture all, or a portion, of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

"Declaration" shall mean this instrument.

80122 3187

"Limited Common Elements" shall mean and include those items which would otherwise be considered General Common Elements which are reserved by the Developer for the use of Owners of specific Apartments to the exclusion of other Owners, such as entry halls, stairways, patios, parking spaces (both open and covered) and fenced yards. The Limited Common Elements shall either be designated by Developer on the Plan or in each Condominium deed with both an address and a letter corresponding to an Apartment address and letter as set forth in the Plan and such Limited Common Elements shall be appurtenant to each such Apartment.

"Managing Agent" or "Manager" shall mean the person or firm designated by Developer or the Board of Directors as hereafter provided to manage the affairs of the Project.

"Mortgage" shall mean a first lien deed of trust as well as a first lien mortgage on one or more Condominiums.

"Mortgagee" shall mean a beneficiary under or holder of a Mortgage who has given to the Association written notice that it is the beneficiary under or holder of a Mortgage affecting all or any part of the Project, as hereinafter defined.

"Owner" shall mean and refer to every person or entity who is a record owner of a fee or an undivided fee interest in any Condominium, including contract sellers. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

"Plan" shall mean the Condominium Plan of the Project attached hereto as Exhibit "C" and made a part hereof for all purposes.

"Property" shall mean the Land together with the easements appurtenant thereto.

80122 3188

"Project" shall mean the Property and all structures and improvements now or hereafter erected thereon, together with all additions which may hereafter be made thereto as provided in Article II.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.01. Description and Ownership of Project and Apartments. The Project covered by this Declaration is called "Waterfall Crossing Condominiums". The Project consists of seventeen (17) buildings, containing a total of sixty-eight (68) Apartments, one hundred fifty-nine (159) parking spaces (including sixty-eight (68) covered parking spaces), and Common Elements. Each Owner shall be entitled to exclusive ownership and possession of his Apartment. The percentage undivided interest of each Owner in the Common Elements shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Apartment even though such interest is not expressly mentioned or described in the document of conveyance or other instrument.

2.02. Parking Spaces. Each Owner shall, in addition to owning a fee simple interest in his Condominium, have an exclusive easement, appurtenant to his Apartment for the use of one parking space, and may be granted an exclusive easement for the use of one or more additional parking spaces, as designated in the Plan or granted in the Condominium deed to the Owner. Such easement shall not entitle the Owner to (i) construct any garage, carport, or other structure upon the parking space or spaces, or (ii) alter or remove any existing garage, carport or other structure upon the parking space or spaces.

2.03. Patios. The patios shown and graphically described in the floor plan attached to the Plan are Limited

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Common Elements. Each Owner whose Apartment has sole access to a patio shall have an exclusive easement for the use thereof, but such easement shall not entitle an Owner to construct anything thereon or to change any structural part thereof.

2.04. Ownership of Common Elements. Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all other Owners of the Project, and, except as otherwise limited in this Declaration, shall have the right to use the General Common Elements for all purposes incident to the use and occupancy of his Apartment as a place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Apartment. The extent or amount of such ownership shall be expressed by a percentage relating to each Apartment and shall remain constant, unless changed by the unanimous approval of all Owners. The percentage ownership in the Common Elements relating to each Apartment is as set forth on Exhibit "D", attached hereto. In the event the Additional Property is added to the Project in accordance with the provisions of Section 2.09 hereinafter, the percentage ownership in the Common Elements relating to each Apartment shall be adjusted to be as set forth on Exhibit "E", attached hereto.

2.05. Alteration of Apartments. Developer reserves the right to change the interior design and arrangement of all Apartments but not to alter the boundaries between Apartments so long as Developer owns the Apartments, so altered. No such change shall increase the number of Apartments nor alter any boundaries of the Common Elements without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere herein provided.

2.06. Easements.

A. Easements are reserved throughout the Project as may be required for utility services of whatsoever nature or description including by way of illustration, but not in limitation thereof, those relating to telephone, electricity, gas, hot and cold water, heating, refrigeration, air conditioning, ventilating, garbage and sewage disposal, in order to adequately serve the Project; provided, however, that easements of such nature through an Apartment shall only be such as are shown in the plans for the building to be constructed, or as the building shall be constructed, unless approved in writing by the Owner of the servient Apartment.

B. There are appurtenant to the Apartments air conditioning compressors which are located in the General Common Elements appurtenant to such Apartments. An easement is hereby reserved in favor of each such Apartment for the purpose of placement, maintenance, repair and replacement of the said air conditioning compressors by Developer and the respective Owners; provided that no air conditioning compressor shall be placed in any part of the General Common Elements other than the present location unless the written approval of the Board shall have been first obtained.

2.07. Encroachments. The existing physical boundaries of an Apartment, or of an Apartment reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than any metes and bounds description expressed in the Plan or in an instrument conveying, granting or transferring an Apartment, regardless of settling or lateral movement and regardless of minor variances between boundaries shown on the Plan or reflected in the instrument of grant, assignment or conveyance and those existing from time to time.

2.08. Sale of Interest in Common Elements. No Owner shall be entitled to sell, lease or otherwise convey

his interest in any of the Common Elements, or in any element of the component interests which comprise his Condominium, except in conjunction with a conveyance of his Condominium, and any attempted or purported transaction in violation of this provision shall be void.

2.09. Addition of the Additional Property to the Project. The Additional Property may become subject to this Declaration in the following manner:

A. Declarant may, without the consent of any Owner, at any time prior to December 31, 1986, add the Additional Property and any improvements thereon to the Project and to the concept of this Declaration by filing of record a Condominium Plan for the Additional Property and a Supplementary Declaration and Master Deed, which shall extend the concept of the covenants, conditions and restrictions of this Declaration to the Additional Property.

B. In the event the Additional Property is added to the Project as set forth in this Section, such addition when made shall automatically extend the jurisdiction, functions and duties of the Association to the Additional Property. Upon the filing of the Condominium Plan and the Supplementary Declaration and Master Deed for the Additional Property, the percentage ownership in the Common Elements relating to each Apartment shall be adjusted to be as set forth on Exhibit "E", attached hereto.

#### ARTICLE III

##### ORGANIZATION AND MANAGEMENT

3.01. The Board of Directors. The Project shall be organized and operated as a condominium residential development. The Owners shall operate the Condominium Project as provided herein through the Association. The



Board of Directors of the Association shall consist of not less than three (3) nor more than seven (7) members, the exact number to be fixed from time to time by the Owners of a majority of the Apartments. The initial Board of Directors shall consist of three (3) members.

3.02. Voting. The Association shall have two classes of voting membership:

CLASS A: Class A Members shall be all Members with the exception of Developer. Class A Members shall be entitled to one (1) vote for each Condominium in which they hold the interest required for membership. When more than one person holds such interest or interests in any Condominium, all such persons shall be Members, and the vote for such Condominium shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Condominium.

CLASS B: The Class B Member(s) shall be Developer. The Class B Member(s) shall have a total number of votes equal to one (1) more than the total number of votes of the Class A members. However, at such times as the total number of Condominiums owned by the Class A Members equals or exceeds three (3) times the total number of Condominiums owned by the Class B Member(s), the Class B Member(s) shall, during the time such equality or excess continues, be entitled to only one (1) vote for every Condominium owned by it. Notwithstanding any other provision of this Article, from and after December 31, 1981, the Class B Member(s) shall be entitled to only one vote for every such Lot.

3.03. Election, Tenure and Proceedings of Board of Directors.

A. At the organizational meeting of the Association, as provided in the Bylaws, the Owners shall elect a new Board of Directors and at each annual meeting the Owners shall elect members of the Board to replace the members



whose terms have expired, as provided in the Bylaws. Members of the Board (other than the initial Board of Directors as specified in the Articles of Incorporation) shall be Owners or spouses of Owners. If an Owner is a partnership or corporation, any partner or officer thereof shall qualify as an Owner and may be a member of the Board. A majority of the total number of members on the Board shall constitute a quorum. Members of the Board elected at the organization meeting shall serve until the first annual meeting. At the first annual meeting, three (3) Board members shall be elected.

B. At the organization meeting, each member of the Board shall be elected for a term of one (1) year. Thereafter, members of the Board shall serve for a term of two (2) years and until their respective successors are elected, or until their death, resignation or removal; provided, that if any member ceases to be an Owner, or the spouse of an Owner, his membership on the Board shall thereupon terminate. Any member of the Board may resign at any time by giving written notice to the other members of the Board, and any member of the Board may be removed from membership on the Board by the vote of the Owners of a majority of the Condominiums. Any vacancy in the Board shall be filled by the other members of the Board, provided that the Owners, acting at a meeting called within ten (10) days after the occurrence of the vacancy, may fill the vacancy.

C. The Board may act (i) by majority vote at a meeting at which a majority of its members are present and of which notice has been given or for which notice has been waived, or (ii) by the unanimous written consent of its members without a meeting. The Board shall by resolution establish the required notice of meetings and other regulations for the conduct of meetings.

3.04. Consent of Owners in Lieu of Meeting.

A. Any action, except election of the Board, which may be taken by the vote of the Owners at a meeting, may be taken without a meeting if authorized by the written consent of the Owners owning at least a majority of the Condominiums; provided that if any greater proportion of voting power is required for such action at a meeting, then such greater proportion of written consents shall be required.

B. In no instance where action is authorized by written consent need a meeting of Owners be called or noticed.

3.05. Delegation. The Board shall elect (i) a President of the Association who shall preside over both its meetings and those of the Owners, and who shall be the chief executive officer of the Association, (ii) a Secretary who shall keep the minutes of all meetings of the Board and of the Owners and who shall, in general, perform all the duties incident to the office of Secretary, (iii) a Treasurer to keep the financial records and books of account, and (iv) such additional officers as shall be authorized by the Bylaws of the Association. The Board may delegate any of its duties, power or functions, including, but not limited to, the authority to give the certificates provided for in Article IV hereof, to any person or firm, to act as Manager of the Project or any separate portion thereof, provided that any such delegation shall be revocable upon not more than thirty (30) days' written notice by the Board. The members of the Board shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

80122 3195

3.06. Powers and Duties of Board of Directors.

The Board, for the benefit of the Condominiums and the Owners, shall provide, and shall pay for out of the maintenance fund hereinafter provided, the following:

35

(a) TAXES and assessments, and other liens and encumbrances, which shall properly be assessed or charged against the Project or the Common Elements rather than against the individual Owners and individual Apartments. The Board will endeavor to have each Condominium separately assessed, and each Owner shall execute such instruments and take such action as may reasonably be required by the Board to obtain such separate assessment;

(b) Exterior maintenance, painting, gardening, care, preservation and any desired minor improvements for each Apartment and the Common Elements, and full maintenance of and utility services for the Common Elements, including the parking spaces and including furnishing and upkeep of any desired personal property for use in the Common Elements;

(c) Maintenance of utility systems in the Common Elements, and any required structural repairs. The Owner of each Condominium shall pay for maintenance and repair of heating, plumbing and air conditioning systems which service only his Condominium, and shall pay for any repairs resulting from his fault or neglect or that of any of his guests or any occupant of his Condominium;

(d) Maintenance and repair of any Apartment of a type normally the sole responsibility of the Owner of the Apartment if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the interests of Owners generally and if the Owner of the Apartment has failed or refused to perform such maintenance or repair; provided, however, that the Board shall levy a special assessment against the Condominium of which the Apartment is a part for repayment of the cost of such maintenance or repair;

80122 3186

(e) The services of a person or firm to manage the Project or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Project, whether such personnel are employed directly by the Board or by the Manager;

(f) Legal and accounting services;

(g) A multi-peril policy or policies of insurance insuring the Project (including Common Elements and the Apartments) against loss or damage by the perils of fire, lightning and those contained in the extended coverage, vandalism and malicious mischief endorsements, as required by Section 6.01 hereof;

(h) A policy or policies of insurance insuring the Board, the Association, the Owners, and the Managing Agent against any liability to the public or to the Owners (and their invitees or tenants), incident to the ownership or use of the Project, as required by Section 6.03 hereof;

(i) Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(j) Such fidelity bonds as the Board may determine to be advisable;

(k) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Project or for the enforcement of this Declaration; provided that if any

such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are determined by the Board to be for the special benefit of particular Apartments, the cost thereof shall be specially assessed to the Owners of the Condominiums of which such Apartments are a part.

3.07. Additional Rights, Powers and Duties of the Board. The Board shall have the following additional rights, powers and duties:

(a) To execute all declarations of ownership for tax assessment purposes with regard to the Common Elements, on behalf of all Owners;

(b) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(c) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks), and, generally, to have all the powers of an apartment house manager;

(d) To protect or defend the Project from loss or damage by suit or otherwise, and to provide adequate reserves for replacements;

(e) To make reasonable rules and regulations for the operation of the Project and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by the Owners of a majority of the Condominiums or, with respect to a rule applicable to less than all of the Project, by the Owners of a majority of the Condominiums in the portions affected (without limiting the generality of the foregoing language, the rules and

38

regulations must provide that any pet deemed a nuisance by the Board shall be removed from the premises and may provide for limitations on use of the swimming pool, tennis courts or other common recreational areas during certain periods by youthful persons, visitors or otherwise);

(f) To make available to each Owner within sixty (60) days after the end of each year an annual report and, upon the written request of the Owners of one-third (1/3rd) of the Condominiums, to have such report audited by an independent certified public accountant, which audited report shall be made available to each Owner within thirty (30) days after completion;

(g) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess all Condominiums in proportionate amounts to cover the deficiency;

(h) To sell the entire Project for the benefit of the Owners when partition of the Project may be had under Section 8.04 hereafter;

(i) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provision or rules.

(j) The Board or its agents upon reasonable notice may enter any Apartment when necessary in connection with any maintenance or construction for which the Board is responsible. The Board or its agents may likewise enter any balcony or stairway for maintenance, repairs, construction or painting. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

80122 3100

(k) The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions to, or capital improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of this Declaration) requiring an expenditure in excess of Ten Thousand Dollars (\$10,000) [exclusive of any insurance proceeds applied to such alterations, additions, improvements, or repair of damages], without in each case the prior approval of the Owners holding a majority of the total votes of the Association. Expenditures for such purposes shall be made from the maintenance fund.

(l) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Association and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Association.

(m) Developer may engage the initial Managing Agent under a contract expiring not later than two (2) years after the date hereof, which contract shall be assumed by the Association and which contract will provide that it can be terminated by either party without cause and without payment of a termination fee on ninety (90) days' or less written notice. Thereafter, the Board may engage the services of a Managing Agent to manage the Property to the extent deemed advisable by the Board; provided, that all contracts relating to

80122 3200



such management services shall not exceed three (3) years and can be terminated by either party without cause and without payment of a termination fee on ninety (90) days' or less written notice.

(n) The Board shall have the authority to lease or to grant licenses or concessions with respect to any part of the Common Elements, subject to the terms of this Declaration. Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of the Association or the Owners.

3.08. Board Powers, Exclusive. The Board, on behalf of the Association, shall have the exclusive right to contract for all goods, services, and insurance, payment for which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

3.09. Membership in the Association. Every Owner shall be a member of the Association, entitled to vote as herein provided, but such membership and voting rights shall automatically terminate upon the sale, transfer or other disposition by such member of his Condominium, at which time the new Owner shall automatically become a member of the Association. The Association may issue non-transferable certificates evidencing membership therein.

3.10. Limited Liability of the Board and the Owners. The members of the Board shall not be personally liable to the Owners or others for any mistake of judgment or for any acts or omissions made in good faith as such Board member, or acting as the Board. Each member of the Board shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any



proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board, or any settlement thereof, whether or not he is a member of the Board at the time such expenses are incurred, except in such cases wherein the member of the Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Board. The liability of any Owner arising out of any contract made by the Board or Developer or out of the aforesaid indemnity in favor of the members of the Board and Developer shall be limited to such proportion of the total liability thereunder as his percentage fractional interest in the Common Elements. Every agreement made by the Board, Developer or by the Managing Agent on behalf of the Association shall provide that the members of the Board, Developer or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder.

#### ARTICLE IV

##### ASSESSMENTS - MAINTENANCE FUND

###### 4.01. Estimated Cash Requirements: Assessments.

A. Within thirty (30) days prior to the beginning of each calendar year the Board shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Such "estimated cash requirement" shall be assessed to the Owners according to the percentage interest of each in the Common Elements. If the said estimated sum proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may at any time levy a further assessment, which

shall be assessed to the Owners in like proportions, unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Association in equal monthly installments on or before the first (1st) day of each month during such year, or in such other reasonable manner as the Board shall designate.

B. The rights, duties and functions of the Board set forth in this Article IV may, at the election of Developer, be exercised by Developer for the period commencing on the date hereof and ending on December 31, 1981.

C. All funds collected hereunder shall be expended for the purposes designated herein.

4.02. Omission of Assessments. The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this Article IV shall be effective only upon unanimous written consent of the Owners and their Mortgagees.

4.03. Detailed Records. The Board shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Owner at convenient hours of week days.

4.04. Commencement of Payment of Assessments; Taxes. Each Owner shall pay monthly assessments as above

80122 3203

specified commencing with the close of the purchase of the Condominium owned by the Owner. In addition, each Owner shall pay, within ten (10) days after notice by Developer or the Board as to the amount due, which notice shall be given at least fifteen (15) days prior to delinquency of the taxes, an amount equal to the portion of real property taxes and utility bills attributable to his Condominium which are assessed or charged against the Project rather than against the Condominiums.

4.05. Maintenance Fund. The monthly assessments collected by the Association shall constitute the maintenance fund for the Project. The Board may at any time ratably increase or decrease the amounts of monthly assessments to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Board under this Declaration, including provisions of reasonable reserves for replacements. The Board is obligated to maintain assessments at a level sufficient to enable payment of all costs of operation of the Project.

4.06. No Exemption from Liability. No Owner may exempt himself from liability for his assessment by any waiver of the use or enjoyment of the Common Elements, or by the abandonment of his Condominium, but an Owner will not be liable for assessments accruing after consummation of a transfer of his Condominium accomplished in accordance herewith, or after he has executed and delivered to the Board a recordable instrument conveying to the Board his interest in his Condominium free and clear of all liens and encumbrances other than a first mortgage held by a bank, savings and loan association, insurance company or similar institutional lender and/or a mortgage held by Developer and/or the lien for unpaid assessments.

80122 3204

4.07. Default in Payment of Assessments. There is hereby created a present Deed of Trust lien upon each Condominium to secure the payment of all assessments, whether regular or special, levied by the Board pursuant to the terms hereof. In connection therewith, and for the purpose of securing the payment of the aforesaid assessments, Developer hereby grants, sells and conveys to the Association, as Trustee, the Condominiums, IN TRUST, upon the terms and conditions herein set forth, and for such purposes this Section 4.07 shall constitute a Deed of Trust under the laws of the State of Texas. Each assessment shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed. Any delinquent assessment shall, after thirty (30) days' delinquency, bear interest from the original due date at the highest lawful rate. In the event of a default or defaults in payment of any assessment or assessments, and in addition to any other remedies herein or by law provided, the Board may enforce each such obligation as follows:

(a) By suit or suits at law to enforce each such assessment obligation. Each such action must be authorized by a majority of the Board, and any such suit may be instituted on behalf of the Association by any one (1) member of the Board or by the Manager, if the latter is so authorized in writing. Each such action shall be brought in the name of the Board and the Board shall be deemed to be acting on behalf of all the Owners. Any judgment rendered in any such action shall include, where permissible under any law, a sum for reasonable attorneys' fees in such amount as the court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the President of the Association, acting in the name

80122 3205

of the Association, to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

(b) At any time within ninety (90) days after the occurrence of any such default, the Board may give a notice to the defaulting Owner, which notice shall state the date of the delinquency and the amount of the delinquency, and make a demand for payment thereof. If such delinquency is not paid within ten (10) days after delivery of such notice, the Board may elect to record a notice of assessment against the Condominium of such delinquent Owner. Such notice of assessment shall state (1) the name of the record Owner, (2) a description of the Condominium against which the assessment is made, (3) the amount claimed to be due and owing, (4) that the notice of assessment is made by the Board pursuant to the terms of this Declaration (giving the date of execution and the date, book and page references of the recording hereof in the Office of the Clerk of the County of Dallas, Texas), and (5) that a lien is claimed against the described Condominium in an amount equal to the amount of the stated delinquency. Any such notice of assessment shall be signed and acknowledged by any member of the Board. Upon recordation of a duly executed original or duly executed copy of such notice of assessment by the Clerk of the County of Dallas, the Deed of Trust lien herein created shall immediately become subject to foreclosure, subject only to the limitations hereinafter set forth. Each default shall constitute a separate basis for a notice of assessment or a lien. If any Owner shall continue to default in the payment of any assessment payable hereunder for a period of ten (10) days after the delivery and recordation of any said notice of assessment, the Association,

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80122 3206

as Trustee acting through any authorized officer or by any agent or attorney-in-fact properly authorized by any such officer, may, when authorized so to do by a majority of the Board, sell the Condominiums owned by the delinquent owner at public auction to the highest bidder for cash pursuant to the provisions of Article 3810 of the Texas Revised Civil Statutes as in force and effect on January 1, 1976, or in accordance with the prescribed manner for foreclosure of Deed of Trust liens provided by any future amendment to such Article 3810 or any other statute or article enacted in substitution therefor. In lieu of the foregoing, the Board may enforce any such lien as a mortgage lien in accordance with the provisions of the laws of the State of Texas, now or hereafter in effect, which provisions (including matters incorporated therein by reference) are hereby incorporated herein by reference. In the event such foreclosure is by action in court, reasonable attorneys' fees shall be allowed to the extent permitted by law. In the event the foreclosure is as in the case of a deed of trust under power of sale, the Board, or any person designated by it in writing, shall be deemed to be acting as the agent of the lienor and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. The deed upon foreclosure shall be executed and acknowledged by any member of the Board or by the person conducting the sale.

(c) For the purposes of this Section 4.07, a deed upon foreclosure executed and acknowledged by any member of the Board shall be conclusive upon the Board and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained.



In the event any notices of assessment have been recorded as herein provided, and thereafter the Board shall receive payment in full of the amount claimed to be due and owing, then upon demand of the Owner or his successor, and payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), the Board, acting by any member, shall execute and acknowledge (in the manner above provided) a release of such notice, stating the date of the original notice of assessment, the amount claimed, the date, book, and page wherein the notice of assessment was recorded, and the fact that the assessment has been fully satisfied.

4.08. Payment of Assessments Upon Sale or Conveyance of an Apartment. Upon the sale or conveyance of an Apartment, all unpaid assessments against an Owner levied by the Board pursuant to the terms hereof shall first be paid out of the sale price paid by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- (i) Assessments, liens, and charges in favor of the State of Texas and any political subdivision thereof for taxes past due and unpaid on the Apartment; and
- (ii) Amounts due under mortgage instruments duly recorded.

#### ARTICLE V

#### PROVISIONS WITH RESPECT TO THE APARTMENTS, THE COMMON ELEMENTS AND MORTGAGES

#### 5.01. Each Owner's Obligation to Repair.

A. Except for those portions which the Board is required to maintain and repair hereunder (if any), each Owner shall at such Owner's expense keep the interior of his Apartment and its equipment and appurtenances in good order, condition and repair in a clear and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and

condition of his Apartment. In addition to decorating and keeping the interior of his Apartment in good repair, each Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposals or ranges that may be in, or connect exclusively with his Apartment.

D. Each Owner shall also, at such Owner's own expense, keep the patio (if any) and carport or other covered parking area (if any) which have been assigned to his Apartment in a clean and sanitary condition. The Association shall not be responsible to any Owner for loss or damage by theft or otherwise of articles which may be stored by the Owner in any Common Elements or his Apartment.

5.02. Alterations, Additions and Improvements.

A. No Owner shall make any alterations, repairs of or additions to his Apartment which would substantially affect the exterior appearance thereof, or erect a radio or television antenna upon the Building of which his Apartment is a part, or paint any part of the exterior of his Apartment, without the prior written approval of the plans and specifications therefor, and the color, by the Board. The Board shall grant its approval only in the event that the proposed work will benefit and enhance the Project in a manner generally consistent with the plan of development thereof. The Board's approval or disapproval shall be in writing. In the event that the Board fails to approve or disapprove within thirty (30) days after the appropriate plans and specifications have been submitted to it, or in any event, if no suit to enjoin such work has been commenced before thirty (30) days after commencement thereof, approval will be deemed given and compliance with the terms of this paragraph conclusively presumed.

80122 3209



B. The Board may delegate its powers under this Section to an Architectural Committee appointed by the Board, which need not consist in part or in whole of Owners.

C. Nothing shall be done in or to any part of the Project which will impair the structural integrity of any part of the Project except in connection with alterations or repairs specifically permitted or required hereunder.

D. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of, or any plumbing or electrical work within, any common wall without the prior consent of all Owners of the affected Apartments. Each Owner shall have the right to paint, wallpaper, or otherwise furnish the interior surfaces of his Apartment as he sees fit.

5.03. Restrictions on Use of Apartments and Common Elements. The Project shall be occupied and used as follows:

(a) Each Apartment shall be used exclusively for residential purposes, and carports and parking spaces shall be used exclusively for the parking of passenger automobiles.

(b) There shall be no obstruction of the Common Elements, nor shall anything be kept or stored in the Common Elements, nor shall anything be altered, or constructed or planted in, or removed from the Common Elements, without the written consent of the Board.

(c) No Owner shall permit anything to be done or kept in his Apartment or in the Common Elements which will result in any increase of fire insurance premiums or the cancellation of insurance on any part of the Project, or which would be in violation of any law. No waste shall be committed in the Common Elements.

80122 3210

(d) No sign of any kind shall be displayed to the public view on or from any part of the Project, without the prior consent of the Board, except signs temporarily used by Developer in the original sale or in leasing of Condominiums.

(e) No noxious or offensive activity shall be carried on, nor shall any outside lighting or loudspeakers or other sound producing devices be used, nor shall anything be done, in any part of the Project, which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.

(f) No Owner shall cause or permit anything to be placed on the outside walls of his Apartment, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any building or any part thereof, without the prior consent of the Board.

(g) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

5.04. Liability of Owners for Negligence. Each Owner shall be liable to the Board for any damage to the Common Elements caused by the negligence or willful misconduct of the Owner or his family, guests, or invitees, to the extent that the damage shall not be covered by insurance. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within the Apartment of the indemnifying Owner, provided that this protection shall not extend to any Owner whose negligence or willful misconduct caused or contributed to the cause of the injury or damage.

80122 3211

5.05. Rules of the Board. All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including attorneys' fees.

5.06. Abatement of Violations. The violation of any rule or regulation adopted by the Board, or the breach of this Declaration, or of any other declaration of covenants, conditions or restrictions to which a Condominium may be subject, shall give the Board the right, in addition to any other right or remedy elsewhere available to it:

(a) to enter into an Apartment in which, or as to which, such violation or breach exists, and to summarily abate and remove, at the expense of its Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of any of the foregoing documents, and the Board shall not be deemed to have trespassed; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate until paid, shall be charged to and assessed against such defaulting Owner, and the Board shall have a lien for all of the same upon the Condominium of such defaulting Owner, upon all of his additions and improvements thereto, and a security interest under the Texas Uniform

Commercial Code upon all of his personal property in his Apartment or located elsewhere on the Project. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

5.07. Advances, Powers to Enforce Declaration of Owners and Mortgagees.

A. Should any Owner or any Mortgagee of any Condominium advance any sum toward discharge of an obligation of the Board on behalf of the Association in order to protect the Project against the consequences of a delinquency in discharging such obligation, such Owner or Mortgagee, in connection with such advance, shall be subrogated to all rights of the Board, including the right to collect interest, against those Owners whose defaults have made necessary the advance concerned, until such advance shall have been repaid together with interest thereon at the highest lawful rate plus any reasonable attorneys' fees or other reasonable costs incurred in collection.

B. If the Board has failed to act to enforce any provision of this Declaration for ten (10) days after written demand by any Owner or Mortgagee of any Condominium, then any such Owner or Mortgagee shall be entitled to prosecute, on behalf of the Association and all the Owners, any action authorized hereunder to be prosecuted by the Board, and shall be entitled to any other appropriate equitable relief.

5.08. Failure of the Board to Insist on Strict Performance; No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such term, covenant, condition or restriction

but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board or Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or the Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Manager.

5.09. Mortgagee Protection Provisions.

A. Any Mortgagee, upon written request to the Association, shall be given written notification by the Association of (i) any default by the Owner of the Condominium covered by such Mortgage in the performance of such Owner's obligations hereunder which is not cured within sixty (60) days, (ii) any loss to or taking of the Common Elements if such loss or taking exceeds \$10,000, or (iii) damage to an Apartment covered by a Mortgage if the amount of such damage exceeds \$1,000.

B. Any Mortgagee which comes into possession of the Condominium covered by a Mortgage it holds pursuant to the remedies provided in the Mortgage, foreclosure of the Mortgage, or Deed (or Assignment) in lieu of foreclosure, shall take the Condominium free of any claims for unpaid assessments or charges against the mortgaged Condominium which accrue prior to the time such Mortgagee acquires title to the Condominium.

C. Unless at least seventy-five percent (75%) of the Mortgagees (based upon one vote for each Mortgage owned), or Owners (other than Developer) of the Individual Condominiums have given their prior written approval, the Association shall not be entitled to:

(i) by act or omission, seek to abandon or terminate the Project;

(ii) change the pro rata interest or obligations of any individual Condominium for the purpose of (y) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (z) determining the pro rata share of ownership of each Condominium in the Common Elements;

(iii) partition or subdivide any Condominium;

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

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

D. Mortgagees shall have the right to examine the books and records of the Association or the Project.

E. Assessments levied by the Board shall include an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

F. Any lien which is or may be created hereunder upon any Condominium, including, but not limited to, that created by Section 4.07 hereof, and the right to foreclose the same, is and shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by, any recorded Mortgage upon such interest made in good faith and for value, provided that after the foreclosure of any such Mortgage there may be a lien created pursuant to Section 4.07(b) hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any shall be claimed, shall have the same effect and be enforced in the same manner as provided herein.

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G. No amendment to this Declaration shall affect the rights of a Mortgagee which holds a Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

H. No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage 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.

5.10. Right of Access. Each Owner hereby grants to the Board a right of access to his Apartment for the purpose of making investigations or for the purpose of correcting any condition originating in his Apartment and threatening another Apartment or the Common Elements, or for the purpose of doing, taking or performing any act which the Board shall be entitled to do, take or perform.

5.11. Use by Developer. Until Developer has completed all of Developer's contemplated improvements and closed the sales of all of the Condominiums, neither the Owners nor the Board nor the use of the Project nor the application of this Declaration shall interfere with the completion of the contemplated improvements and the sale of the Condominiums. Developer may make such use of the unsold Apartments and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, the showing of the Project and the Apartments therein, the display of signs thereon and therein and the transient use of Apartments and parking spaces therein.

5.12. Transfers. No transfer of a Condominium shall be of any force or effect for any purpose until an Owner who transfers the Condominium shall notify the Board in writing of the name and address of the transferee, the

nature of the transfer and the Apartment involved, as well as such other information relative to the transfer and the transferee as the Board may reasonably request. Such notice shall also contain an executed copy of the instrument of transfer. The provisions hereof shall apply by way of illustration and not in limitation of a transfer occurring by reason of a sale, gift, devise or inheritance, or by lease or by any other manner not heretofore considered. The provisions of this Section 5.12 shall not apply to Developer.

#### ARTICLE VI

#### INSURANCE

6.01. Maintenance of Hazard Insurance. The Board, on behalf of the Association, shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, insuring the Project against loss or damage by the perils of fire, lightning and those contained in extended coverage, vandalism and malicious mischief endorsements, on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy, but not less than eighty percent (80%) of the insurable value (based upon replacement costs) of the Project (but not less than the aggregate amount of all outstanding indebtedness secured by Mortgages against the Apartments) written in the name of, and the proceeds thereof shall be payable to, the Association as trustee for the use and benefit of the individual Owners (without naming them) in the proportions established in Section 2.04. Prior to the renewal of any such policy or policies of insurance, the Board shall obtain an appraisal from a qualified appraiser for the purpose of



determining the full replacement cost of the Common Elements and the Apartments for the amount of insurance to be effected pursuant hereto. The cost of any and all such appraisals shall be maintenance fund expenses. All such policies of insurance shall comply with the provisions of Section 6.02 hereof and shall (i) contain standard mortgage clause endorsements in favor of the Mortgagee or Mortgagees of each Apartment, if any, as their respective interests may appear; (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner; (iii) contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least ten (10) days' prior written notice to the Mortgagee of each Apartment; and (iv) contain a Replacement Cost Endorsement.

6.02. Insurance Trustee. The Board may engage the services of a bank or trust company authorized to do trust business in the State of Texas and having capital and surplus of not less than Fifty Million Dollars (\$50,000,000) to act as Insurance Trustee and to receive and disburse the insurance proceeds resulting from any loss upon such terms as the Board shall determine consistent with the provisions of this Declaration. In the event the lowest of two (2) bids from reputable contractors for making all repairs required by any such loss shall exceed Twenty Thousand Dollars (\$20,000), the Board upon written demand of the Mortgagee of any Apartment shall engage the services of an Insurance Trustee as aforesaid. Except as otherwise provided in Section 6.06 hereof, the fees of such Insurance Trustee shall be maintenance fund expenses. The proceeds of such insurance shall be applied by the Board or by the Insurance Trustee on behalf of the Board for the reconstruction of the Building damaged, or shall be otherwise disposed of, in accordance with the provisions of Article VII of this

80122 0218

Declaration; and the rights of the Mortgagee of any Apartment under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the Building damaged; provided, however, that if the Board or the Insurance Trustee fails to perform all of the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgage clause to collect the proceeds of the policy or policies of insurance, any amounts so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. All insurance policies shall contain a waiver of subrogation with respect to the Board, the Association, its employees, the Owners and members of their households, and Mortgagees; or such parties shall be named as additional insureds.

6.03. Maintenance of Liability Insurance. The Board, on behalf of the Association, shall obtain and maintain at all times a policy or policies of insurance insuring the Association, the Board, the Owners, and the Managing Agent against any liability to the public or to the Owners (and their families, invitees or tenants), incident to the ownership or use of the Project, the Common Elements and individual Condominiums, in amounts deemed appropriate by the Board, which insurance shall contain endorsements providing that the rights of the named insureds shall not be prejudiced with respect to actions against other named insureds.

6.04. Governing Provisions. All insurance provided above shall be governed by the following provisions:

(a) All policies shall (i) comply with the hazard insurance requirements of the Federal Home Loan Mortgage Corporation as they apply to condominium loans; and (ii) be written with a company licensed to do business in the State of Texas and holding a rating of "AAA" or better by Best's Insurance Report or other then comparable rating. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard insurance requirements of the Federal Home Loan Mortgage Corporation, then the requirements of the Federal Home Loan Mortgage Corporation shall control and such requirements shall be complied with by the Board.

(b) Exclusive authority to adjust all claims under policies hereafter in force on the Project shall be vested in the Board or its authorized representatives.

(c) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

(d) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board, in behalf of all of the Owners, may realize under any insurance policy which the Board may have in force on the Project at any particular time.

(e) Each Owner shall be required to notify the Board of all improvements made by the Owner to his Apartment, the value of which is in excess of One Thousand Dollars (\$1,000).

(f) Any Owner who obtains individual insurance policies covering any portion of the Project other than

80122 3220

personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board within thirty (30) days after purchase of such insurance.

(g) The Board shall be required to make every effort to secure insurance policies that will provide for the following:

- (1) A waiver of subrogation by the insurer as to any claims against the Association, the Board, the Manager, or the Owners.
- (2) That the policy cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board or Manager, or on account of the conduct of any one or more individual Owners, without a prior demand in writing that the Board, Manager or Owner(s) cure the defect.
- (3) That any "no other insurance" clause in the master policy excludes individual Owners' policies from consideration.

6.05. Premiums. Premiums upon insurance policies purchased by the Board shall be paid by the Board as a maintenance fund expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of an Apartment or its appurtenances or of the Common Elements by an Owner shall be assessed against that Owner.

6.06. Distribution of Proceeds. Proceeds of insurance policies received by the Board or the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) Subject to the approval of Mortgagees as provided in paragraph 5.09(c) hereof, all expenses of the Insurance Trustee (if any) shall be first paid or provision made therefor.

(b) If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be used to defray the cost thereof as

provided in Article VII hereafter. Any proceeds remaining after defraying such costs shall be distributed first to the Mortgagees and then to the Owners, as their interests may appear.

(c) If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to Owners and their Mortgagees being payable jointly to them.

(d) In making distribution to Owners and their Mortgagees, the Insurance Trustee (if any) may rely upon a certificate of the Association made by its President and Secretary as to the names of Owners and their respective shares of the distribution.

6.07. Responsibility of Each Owner. Each Owner shall be responsible for his own insurance on his personal property in his Apartment, his personal property stored elsewhere on the Project and his personal liability to the extent not covered by the liability insurance for all the Owners obtained by the Board as hereinbefore provided.

## ARTICLE VII

### DAMAGE AND DESTRUCTION

7.01. Reconstruction or Repair. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Buildings damaged, shall be applied to such reconstruction. Reconstruction of the Buildings, as used in this paragraph, means restoring the Buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each Apartment and the Common Elements having the same vertical and horizontal boundaries as before. Such reconstruction shall be caused to be accomplished by the Board.

7.02. Inadequacy of Proceeds. If the insurance proceeds are insufficient to reconstruct a Building, damage to or destruction of such Building shall be promptly repaired and restored by the Board using proceeds of insurance, if any, on the Buildings for that purpose, and the Owners shall be liable in proportion to their respective percentage interests in the Common Elements for amount for any deficiency. However, subject to any provision of the Act to the contrary, if two-thirds (2/3rds) or more of any Building in the Project is destroyed or substantially damaged, the Board shall cause such Building to be rebuilt and repaired unless three-fourths (3/4th), in interest and not in numbers, of the Owners elect within thirty (30) days after the occurrence of such damage not to rebuild or reconstruct the Building. In the event the Owners so elect not to repair or rebuild the damaged Building, the Board shall record, with the County Clerk of Dallas County, Texas, a notice setting forth such facts, and upon the recording of such notice:

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

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

(c) any liens affecting any of the Condominiums shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the Project; and

(d) 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



in proportion to the fractional undivided interest owned by each Owner in the Common Elements, after first paying out of the respective shares of the Owners, to the extent sufficient for the purposes, all indebtedness secured by liens on the undivided interest in the Project owned by each Owner.

ARTICLE VIII

MISCELLANEOUS

8.01. Eminent Domain. The taking of a portion of an Apartment or of the Common Elements by eminent domain shall be deemed to be a casualty, and the awards for such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special assessment shall be made against a defaulting Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Owner. Subject to the rights of Mortgagees under the terms of their mortgages, the proceeds of the awards shall be distributed or used in the manner heretofore provided for insurance proceeds, except that when the condominium is not to be terminated and one or more Apartments are taken in part, the taking shall have the following effects:

(a) If the taking reduces the size of an Apartment and the remaining portion of that Apartment can be made tenable, the award for the taking of a portion of the Apartment shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:



(i) The Apartment shall be made tenantable, and if the cost of such work exceeds the amount of the award, the additional funds shall be assessed against the Owner of the Apartment.

(ii) The balance of the award, if any, shall be distributed to the Owner of the Apartment and to the Mortgagee of the Apartment, the remittance being payable jointly to such Owner and Mortgagee.

(iii) If there is a balance of the award distributed to the Apartment Owner and Mortgagee, the share in the Common Elements appurtenant to the Apartment shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Apartment immediately prior to the taking, and then recomputing the shares of all Owners in the Common Elements as percentages of the total of their shares as reduced by the taking.

(b) If the taking destroys or so reduces the size of an Apartment that it cannot be made tenantable, the award for the taking of the Apartment shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(i) The market value of such Apartment immediately prior to the taking, shall be paid to the Owner of the Apartment and to each Mortgagee of the Apartment, the remittance being payable jointly to the Owner and Mortgagee.

(ii) The remaining portion of such Apartment, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Owners, in the manner approved by the Board of Directors of the Association; provided, however, that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for further improvement of the Common Elements.

(iii) The shares in the Common Elements appurtenant to the Apartment which continue as a part of the Condominium shall be equitably adjusted to distribute the ownership to the Common Elements among the reduced number of Owners. This shall be done by recomputing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

(iv) If the amount of the award for taking is not sufficient to pay the market value of the condemned Apartment to the Owner and to restore

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