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 DECLARATION OF CONDOMINIUM
 FOR
 2600 BERING DRIVE TOWNHOMES

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**DECLARATION OF CONDOMINIUM
FOR 2600 BERING DRIVE TOWNHOMES**

Realfin Company, a Texas corporation, the owner of a certain tract of land out of Greenfield Oaks Apartments, a subdivision in Harris County, Texas, according to the plat thereof recorded in Volume 256 at Page 23 of the Map Records of Harris County, Texas, and the partial replat thereof recorded in Volume 312, Page 55 of the Map Records of Harris County, Texas, and all improvements on that land, which property is described in Exhibit A which is attached hereto and incorporated herein by reference, hereby submits this property to a condominium regime pursuant to the provisions of the Condominium Act of the State of Texas, to be known as 2600 Bering Drive Townhomes. The following terms, provisions, covenants, conditions, easements, restrictions, uses, liens, charges and obligations shall run with the land and constitute a burden and a benefit to Declarant, its successors and assigns, and any person owning, leasing or otherwise acquiring an interest in the Project, and their grantees, successors, heirs, executors, administrators, devisees or assigns.

**ARTICLE I
DEFINITIONS**

When used in this Declaration, the following words have the following meanings:

1.1 "Act" means the Condominium Act of the State of Texas, Texas Revised Civil Statutes Annotated, article 1301a.

1.2 "Assessments" has the meaning stated in Article 4 of this Declaration.

1.3 "Association" means the 2600 Bering Drive Homeowners Association, Inc., a Texas non-profit corporation, the members of which are the Owners. The term "Association" shall have the same meaning as the term "Council of Co-Owners" in the Act.

1.4 "Board" means the Board of Directors of the Association.

1.5 "Bylaws" mean the Bylaws of the Association, a copy of which is attached to this Declaration as Exhibit C. Whenever the application of the provisions of this Declaration conflict with the application of any provision of the Bylaws, the provisions of this Declaration shall prevail.

1.6 "Building" means and refers to the principal structures to be constructed on the Land and will constitute 34 Units.

1.7 "Common Elements" means the General Common Elements and the Limited Common Elements.

1.8 "Common Expenses" means and includes (a) Expenses of administration, management, operation, maintenance, repair and replacement of the Common Elements, including without limitation, the costs and fees of the Management Agent; (b) Expenses agreed to be Common Expenses by the Board; (c) Expenses stated to be Common Expenses in this Declaration; (d) Insurance premiums for policies covering the Project and other policies maintained by the Association; (e) Taxes assessed against the Project (including the Common Elements) except those assessed against a Unit.

1.9 "Declarant Control Period" means the period described in Section 3.2 of this Declaration.

1.10 "General Common Elements" means and includes the entire Project except the Units, including without limitation the following:

- (a) The foundations, columns, girders, beams, supports, main walls and roofs;
- (b) The yards, gardens, interior courts, fences, storage areas, streets, service drives, walks, service easements, boiler rooms and mechanical rooms, if any;
- (c) The installations consisting of the equipment and materials making up central services such as power, light, gas, water, sanitary sewer pipes and drains, and the like;

(d) All other structures, facilities and equipment located on the Land necessary or convenient to the existence, maintenance and safety of the Project, or normally in common use.

1.11 "Institutional Lender" means the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA") or other similar governmental agency; and any bank, savings and loan association, insurance company, or other similar financial institution holding a recorded Mortgage on any Unit.

1.12 "Land" means the real property described in Exhibit A.

1.13 "Limited Common Elements" means a part of the General Common Elements reserved for the exclusive use of the Owner of a Unit. Attic spaces directly above a Unit, if any, airconditioning compressors and equipment, and any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows (including glass), or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Each Owner shall be solely responsible for the maintenance and upkeep of all such compressors, equipment, patio and balcony areas, and all exterior doors and windows which are appurtenant to that Owner's Unit, and the Association shall have no obligation in connection with the general maintenance and upkeep of those Limited Common Elements, except as otherwise expressly provided for in this Declaration.

1.14 "Map" or "Condominium Map" means and includes the engineering survey of the Land, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the Project, and filed along with the Declaration, consisting of the sheets labelled Exhibits B-1 through B-7 to this Declaration. In interpreting the Map, the existing physical boundaries of each Unit shall be conclusively presumed to be its boundaries. Declarant reserves unto itself the right, so long as Declarant owns one or more Units, to amend the Map and amendments thereto to conform same to the actual location of any of the improvements, to establish, vacate and relocate easements, access road easements, parking spaces, to establish certain General Common Elements not theretofore established, to establish certain General Common Elements not theretofore established, to establish certain General Common Elements as Limited Common Elements, to show such other changes that Declarant may make in accordance with the terms of this Declaration.

1.15 "Management Agent" means the person, firm or organization, if any, engaged under Section 3.4(l) to manage and administer the business and affairs of the Project.

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

1.17 "Mortgage" means a first and superior security interest or lien on a Unit given to a creditor as security for the repayment of a loan made to an Owner for the purpose of purchasing or financing a Unit. A "Mortgagee" is the beneficiary, whether one or more, under a Mortgage.

1.18 "Owner" means a person, firm, corporation, partnership, trust, association or other legal entity from time to time owning a Unit, which includes Declarant to the extent and for so long as it owns a Unit or Units, but which excludes Mortgagees and tenants.

1.19 "Rules and Regulations" means the rules and regulations adopted by the Board, and the Initial Rules and Regulations are attached as Exhibit A to the Bylaws.

1.20 "Percentage Ownership Interest" means the undivided percentage in and to the Common Elements based on the ratio of the number of square feet of floor area in each Unit to the number of square feet of floor area in all the Units. If any Unit is divided into two or more Units pursuant to Section 7.2, the Percentage Ownership Interest with respect to the original Unit shall be divided in a like manner among the Units into which it is divided. The Percentage Ownership Interest attributable to each Unit is conclusively established in Exhibit B-1 to this Declaration, unless a different Percentage Ownership Interest is stated in the deed from Declarant to the Owner of that Unit. The sum of all undivided Percentage Ownership Interests in the Common Elements as a whole shall always equal one hundred percent (100%).

1.21 "Project" means the Land and Building and includes the Units and Common Elements as they now and hereafter exist in the condominium form of ownership.

1.22 "Project Documents" means and includes this Declaration and all Exhibits attached hereto, the Articles of Incorporation and Bylaws of the Association, the Map, and the Rules and Regulations.

1.23 "Unit" has the same meaning as "Apartment" in the Act. The designation of each Unit, together with statements of its location, approximate area, and the Common Element area to which it has immediate access, are depicted on the Map. Exterior walls are walls separating one Unit and another Unit or separating a Unit and the Common Elements. The vertical boundaries of a Unit between a Unit and the Common Elements are the unfinished interior surfaces of exterior walls on the Unit side; and the horizontal boundaries of a Unit are the unfinished surfaces of the top of the floor and the unfinished surfaces of the bottom of the ceiling; to the effect that the Unit includes the airspace between the boundaries, and all lath, furring, wallboard, plasterboard, plaster, paneling, paint, wallpaper, enamel and stain on the Unit side of exterior walls, all interior walls, all floor coverings, carpets or other finishings on the top of the floor, and acoustical ceiling tiles or other finishings on the bottom of the ceiling, and any other materials constituting any part of the finished surfaces of the walls, floors, and ceilings. A Unit includes the garage appurtenant to that Unit as shown on the Map, and each garage (whether attached or detached) shall be a part of the Unit. The Unit does not include Common Elements; however, all attic spaces directly above a Unit, airconditioning compressors and equipment, any shutters, awnings, windowboxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows (including glass), or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. 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 exact area, square footage or dimensions shown by the Map. Each purchaser of a Unit hereby expressly waives any claim or demand which he may have against the Declarant or other seller of a 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 and the Map, 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. In the event any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon the Common Elements as a result of any construction, reconstruction, repair, shifting, settling, rising, or lateral movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

ARTICLE 2 OWNERSHIP AND USE OF UNITS AND COMMON ELEMENTS

Every Owner, by accepting a deed or contract for deed, and every tenant under an Owner, by leasing any Unit, expressly covenants and agrees that the terms and provisions of this Declaration and the other Project Documents shall be binding upon them, their heirs, legal representatives, successors and assigns, and covenant that they and their heirs, legal representatives, successors and assigns shall faithfully observe all of the terms, covenants, restrictions, conditions and other provisions wherever imposed in this Declaration or in the other Project Documents.

2.1 Ownership of Unit; Partition. A Unit shall be subject to ownership in fee simple by the Owner and may be individually conveyed and encumbered and shall be the subject of ownership, possession or sale and of all types of judicial acts, as though it were entirely independent of the other Units. Any Unit may be jointly or commonly owned by more than one person, corporation, partnership, trust, association, or other entity, in which event all persons, corporations, partnerships, trusts, associations and other entities jointly or commonly owning a Unit shall collectively be the Owner of the Unit. Any other provisions herein notwithstanding, a Unit shall not be subject to partition or subdivision unless the

Mortgage covering that Unit has been paid in full or unless the Mortgagee has consented to the partition or subdivision. Any partition or subdivision shall be made only in accordance with the other provisions of this Declaration.

2.2 Interest in Common Elements Indivisible From a Unit. The Common Elements shall remain undivided and shall not be subject to an action for partition or division so long as they continue as a part of this condominium regime, and, in any event, all Mortgages secured by an interest in the Common Elements must be paid in full prior to bringing any action for partition or the consent of all holders of those Mortgages must be obtained; provided however, that if any Unit is owned by two or more Owners as tenants-in-common or as joint tenants, Sections 2.1 and 2.2 herein shall not prevent a judicial partition of that Unit as between those Owners. Every lien, conveyance or other transfer of a Unit using the Unit designation includes the Unit and its Percentage Ownership Interest in the Common Elements, without requiring any specific reference, and all the appurtenances and easements in favor of the Unit and shall be subject to this Declaration and the other Project Documents, except as otherwise provided herein.

2.3 Use of Common Elements. Each Owner shall have the right to use and enjoy the General Common Elements, in common with all other Owners for the purposes for which the General Common Elements are intended and as may be required for the purposes of access and ingress and egress to and from and the use and occupancy and enjoyment of the Unit owned by the Owner, without hindering or encroaching upon the lawful rights of other Owners. The right to use and enjoy the General Common Elements extends to each Owner, the tenants or other lawful occupants of each Unit, the guests and invitees of an Owner, and all such other persons as may be invited or permitted by the Association to use or enjoy the General Common Elements or any part thereof, including without limitation any persons to whom the Declarant or the Association has granted an easement; provided however, that the Limited Common Elements assigned to a Unit are for the use and enjoyment only of the Owner or occupants of that Unit.

2.4 Leasing of Units. Any Owner may lease his Unit; provided however, that (a) no Unit shall be leased for a term of less than 30 days or for hotel purposes; (b) no Owner may lease less than the entire Unit; and (c) all leases shall be in writing and expressly made subject to all the terms and provisions of all the Project Documents and shall prohibit assignment or sub-leasing without the written consent of the Owner. Any failure by a lessee to comply with the terms of the Project Documents shall be deemed a default under that lessee's lease. The Owner shall be liable for any acts or omissions of his lessee in the same manner and to the same extent as though such acts or omissions were those of the Owner. Any other Owner, lessee, or the Board may proceed against an Owner for a breach by his lessee without first proceeding against the lessee, which right is cumulative of all other rights granted under this Declaration or by law or in equity, and any other Owner, lessee or the Board, by first proceeding against the lessee, shall not be deemed to have waived its right to proceed against the Owner.

2.5 Mortgaging of Unit. Any Owner may Mortgage his Unit, and no amendment to this Declaration shall affect a Mortgage recorded prior to recordation of any such amendment, unless that Mortgagee joins in the amendment. No breach of any of the terms, covenants, conditions, restrictions, or other provisions in this Declaration shall defeat or render invalid the lien of any Mortgage, but all of these matters shall be binding upon any Owner whose title is derived through foreclosure or trustee's sale, subject to Sections 4.4 and 4.6. of this Declaration.

2.6 Mechanic's Liens. No labor performed or materials furnished with respect to a Unit shall create a lien against a Unit belonging to any other Owner or against the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any such lien arising out of labor performed or materials furnished with respect to his Unit. In the event such a lien is filed and/or a suit for foreclosure of mechanic's lien is commenced, then within 10 days thereafter Owner shall be required to deposit with the Association cash or negotiable securities equal to double the amount of such claim plus interest at 10% per annum for one year together with the sum equal to 10% of the amount of such claim, but not less than \$250.00, which latter sum may be used by the Association for any costs and expenses incurred, including attorney's fees incurred for legal advice and counsel. Except as is otherwise provided in the Project Documents, such sum or securities shall be held by the Association pending final adjudication or settlement of the claim or litigation. Disbursements of such funds or proceeds shall

be made by the Association to insure payment of or on account of such final judgment or settlement. Any deficiency, including attorney's fees incurred by the Association, shall be paid forthwith by the Owner, and his failure to so pay shall entitle the Association to make the payment, and the amount thereof shall be a debt of the Owner, and a lien against his Unit may be foreclosed as is provided in this Declaration for non-payment of Assessments. All advancements, payments, costs and expenses, including attorney's fees, incurred by the Association shall be forthwith reimbursed to it by the Owner, and the Owner shall be liable to the Association for the payment of interest at the rate of 10% per annum on all such sums paid or incurred by the Association.

2.7 Decoration, Maintenance and Repairs of Units: Subject to Sections 2.8 and 2.9 herein, any Owner may decorate and redecorate his Unit and shall have the right to paint, repaint, tile, wax, paper, or otherwise furnish or decorate any interior surfaces of walls, partitions, ceilings and floors within the Unit, but no structural alterations, additions or improvements shall be made within a Unit without the prior written approval of the Board. Each Owner shall, at his own cost and expense, maintain his Unit, all windows and doors serving his Unit, and all Limited Common Elements servicing that Unit, whether or not within the boundaries of the Unit, in good condition and repair.

2.8 Alterations; Exterior Appearance. No Owner shall do or permit to be done anything in, on or to any Unit or Common Element which may (a) impair the structural integrity, weaken the support or otherwise adversely affect the Project; (b) interfere with the access or rights of the other Owners to their Units or to the Common Elements; (c) distract from the exterior appearance of the Building or the Common Elements, including without limitation (i) the placement of any reflective or other distracting material in the windows of the Units; (ii) the erection, attachment or placement of television or radio equipment or antennae (either transmitting or receiving) or air conditioning equipment or any other attachments or installations, without the prior written approval of the Board; (iii) the installation or attachment of any signs or other advertising devices, or any other alteration, visible from the exterior of any Unit or on the Common Elements. Any sign affixed by Declarant to the exterior of the Buildings setting forth the name of the Project shall not be subject to the provisions of this Section 2.8, and any such sign shall be preserved and maintained by the Association.

2.9 Building Use Restrictions. The following restrictions shall apply:

(a) All Units shall be used only for residential purposes. For the purpose of this provision, a Unit shall be deemed to be used for residential purposes when it is used to house persons and their belongings, without regard as to whether the persons are Owners of the Unit or occupy the Unit as tenants. Except for the leasing of any Unit in accordance with Section 2.4, no Unit shall be used for any commercial, business or professional purpose. Keeping personal business or professional records of accounts or handling personal business or professional telephone calls or correspondence shall not be deemed to be a violation of this provision, but regular consultation with customers or clients at a Unit is prohibited.

(b) No unlawful, noxious or offensive activities of any sort shall be carried on or permitted, nor shall anything be done in any Unit or on or in any Common Element which shall be or may become an annoyance or nuisance to others. Each Owner shall comply with all laws, ordinances or other requirements of all governmental authorities with respect to the use and occupancy of his Unit, and with this Declaration and the other Project Documents.

(c) No Owner or occupant of any Unit shall do or permit to be done in or on any Unit, or Common Element, anything which might (i) increase the rate of insurance on the Project or any part thereof, (ii) result in uninsurability of the Project or any part thereof, (iii) cause the cancellation, suspension or reduction of any policy of insurance covering the Project or any part thereof, or (iv) adversely affect the right of recovery under any such policy.

Notwithstanding any other provisions of this Article 2, the Declarant or its agents and employees may use the Common Elements and the Units which are owned by Declarant in any manner reasonably necessary to facilitate sales efforts and the showing of the Project or Units. The provisions of this Article 2 shall not prohibit the use by the Board of all common Elements in any reasonable manner necessary in connection with the operation and maintenance of the Project.

ARTICLE 3
ADMINISTRATION

3.1 Authority to Manage. The affairs of the Project shall be administered by the Association in accordance with the Act and the Project Documents. The Association shall have all rights, powers and duties of the "Council of Co-Owners," as that term is used in the Act, and shall have the right, power and duty to provide for the maintenance, repair, replacement, administration and operation of the Project, as provided in the Project Documents. The business and affairs of the Association shall be managed and administered by the Board of Directors, as provided in the Bylaws.

3.2 Declarant Control Period. Section 3.1 notwithstanding, and for the benefit and protection of the Owners and Mortgagees for the sole purpose of insuring a complete, orderly and timely sellout of the Project, the Declarant shall retain control of and over the Association and the Project until the earlier of (a) 120 days after 75% of the Units have been conveyed to Owners other than Declarant, (b) three years after the conveyance of the first Unit to an Owner other than Declarant, or (c) when in the opinion of Declarant, the Project is viable and operational. Declarant shall give written notice to the Board of the transfer of responsibility for the Association to the Owners at least 30 days prior to the termination of the Declarant Control Period and thereafter the Board shall call the first meeting of Members, which shall be held at or within no later than 30 days after the end of the Declarant Control Period. During the Declarant Control Period, the Declarant may engage a Management Agent under a written contract which expires not later than one year after the date of this Declaration, is terminable without cause by the Association at any time after the transfer of control, and otherwise complies with Section 3.4(l). It is expressly understood, however, that the Declarant will not use this control for any advantage over the Owners by way of retention of any residual rights or interest in the Association or through the creation of any management agreement with a term longer than one year.

3.3 Membership in Association. Except as is otherwise provided in the Project Documents, ownership of a Unit is required in order to qualify for membership in the Association. Any person on becoming an Owner of a Unit shall automatically become a Member of the Association and be subject to the Bylaws. Membership shall terminate without any formal Association action whenever that person ceases to own a Unit, but termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Association during the period of ownership and membership in the Association, or impair any rights or remedies which the Owners have, either through the Board or directly against such former Owner and Member arising out of or in any way connected with ownership and membership and the covenants and obligations incident thereto.

3.4 Powers and Duties of Board. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things, as by law or by the Project Documents directed to be exercised by the Owners. All of the powers and duties of the Board shall be exercised by the Initial Board of Directors named in the Articles of Incorporation of the Association (and their successors and assigns) until the first meeting of the Members. In addition to the foregoing, the powers and duties of the Board include without limitation the powers and duties to:

(a) Operate, clean, care for, maintain, repair and replace the Common Elements, and purchase materials and equipment and employ personnel (including without limitation gardeners, parking attendants, doormen and security guards) or contract for the services necessary or desirable for these purposes. These operations shall include without limitation the furnishing of such common services as the Board may from time to time determine are necessary or economically desirable.

(b) Adopt the annual budget and determine Common Expenses and Assessments.

(c) Adopt and amend Rules and Regulations, not inconsistent with this Declaration, covering the operation and use of the Project.

(d) Open and maintain bank accounts in the name of the Association and to designate the signatories on the accounts.

(e) Manage, control, and otherwise deal with the Common Elements, including the power to grant permits, licenses, and easements for utilities, roads, and other purposes

necessary for the proper operation of the Project, and to temporarily interrupt the normal operation of common services in order to facilitate performance of any maintenance or repair or the making of additions, alterations or improvements authorized by the Board or the Association.

(f) Protect the title to the Common Elements.

(g) Insure and keep insured all of the insurable General Common Elements of the Project in an amount equal to their maximum replacement value as provided in the Declaration. Maximum replacement value shall be determined annually by one or more written appraisals. Further, to obtain and maintain comprehensive public liability insurance as provided in the Declaration. To insure and keep insured all of the fixtures, equipment and personal property acquired by the Association for the benefit of the Association and the Owners of the Units and their Mortgagees. The limits and coverage shall be reviewed at intervals of not less than one year and adjusted, if necessary, to provide such coverage and protection as the Association may deem prudent. So long as the FHLMC and/or the FNMA or any Institutional Lender is a Mortgagee of a Unit in the Project, or owns a unit therein, the Association shall maintain in effect at least such casualty, flood and liability insurance and a fidelity bond, meeting standards established by FHLMC and FNMA for condominiums, as published in the FHLMC "Servicer's Guide" and the FNMA Conventional Home Mortgage Selling Contract Supplement or otherwise, except to the extent such requirements shall have been waived in writing by FHLMC and/or FNMA. Worker's compensation insurance shall at all times be carried to the extent required to comply with any applicable law with respect to the employees, if any, of the Association.

Each Owner may obtain additional insurance at his own expense for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and casualty and public liability insurance coverage within each Unit are specifically made the responsibility of each Owner.

(h) Enforce by any legal or equitable remedies available all obligations of each Owner to the Association.

(i) Appoint auditors and engage legal counsel.

(j) Enter into contracts in connection with the exercise of any of the powers and duties of the Board.

(k) Contract for water, sewer, garbage collection, electrical, gas and other necessary services for the Common Elements.

(l) Engage a Management Agent, under a written contract signed by a majority of the Directors, which shall be terminable by the Association for cause upon 30 days written notice and shall expire not later than one year after it begins. Any of the rights, powers and duties of the Declarant or Board, as the case may be and which can be delegated by law and under this Declaration, may be delegated to and exercised by the Management Agent. The management fee paid to the Management Agent shall be comparable with fees paid to managers of similar residential buildings (whether rental or condominium) in Houston, Texas. The Declarant or Board shall not be liable for any omission or improper exercise by the Management Agent of any such duty, power or function so delegated.

(m) Take all other actions the Board deems necessary and proper for the sound management of the Project and fulfillment of the terms and provisions of this Declaration and the Act, including, without limitation the purchase and/or leasing on behalf of the Project of such personal property and/or fixtures as the Board determines to be reasonably necessary or desirable for use in Common Element areas.

The costs incurred in the exercise of the rights, powers and duties of the Board shall be paid out of the Common Expenses fund. The Board shall not be required to exercise any right, power or duty unless in the Board's opinion there are sufficient funds in the Common Expenses fund for that purpose, or which will be available through Assessments made in accordance with this Declaration. Nothing herein shall authorize the Board to furnish to any Owner services primarily for his benefit or convenience, or for the benefit of any occupant or occupants of any Unit, other than services customarily provided to other Owners or occupants of Units.

ARTICLE 4 ASSESSMENTS

4.1 Personal Obligation of Assessments. All Owners are bound to contribute pro-rata toward the expense of administration and of maintenance and repairs of the General Common Elements, and in the proper case, of the Limited Common Elements, and toward other expenses lawfully agreed upon by the Board, in accordance with Section 15 of the Act. Subject to the provisions of Section 4.4 herein, each Owner of a Unit by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) as a part of the purchase money consideration for such deed and conveyance is deemed to covenant and agree to pay to the Association: (a) all regular monthly Assessments or charges, and (b) all special Assessments for capital improvements and unexpected expenses, such Assessments to be established and collected as provided herein, in the Bylaws, and in the Rules and Regulations of the Association. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

4.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to pay for the Common Expenses, to promote the recreation, health, safety and welfare of all the residents in the entire Project for the improvement and maintenance of the Common Elements for the common good of the Project; and the regular monthly Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Elements. The Limited Common Elements shall be maintained as General Common Elements, and Owners having exclusive use thereof shall not be subject to any special charges or Assessments for the repair or maintenance thereof except as otherwise provided in the Project Documents with respect to those Limited Common Elements serving only a particular Unit. The Association also shall be obligated to pay the Project's pro rata share of maintaining the streets and driveways serving the Project, which costs shall be Common Expenses.

4.3 Budget. The Board shall adopt an annual budget not less than 30 days prior to the beginning of each fiscal year for the purpose of projecting the Common Expenses for the next fiscal year, including but not limited to a reasonable allowance for contingencies and reserves for the periodic maintenance, repair and replacement of improvements to the Common Elements, expenses of management; taxes and special assessments until separately assessed; premiums for insurance required by Section 5.1 herein; landscaping and care of grounds; costs for maintenance of streets and other costs incurred in accordance with the Easement and Agreement recorded under Harris County Clerk's File No. H 254985; common lighting; repairs and renovations; removals of pollutants and trash collections; wages; utility charges for Common Elements; beautification and decoration; professional, including legal and accounting fees (except that no Association funds may be used for the purpose of bringing suit against the Declarant, its representatives, successors or assigns), management fees, expenses and liabilities incurred by the Management Agent or the Board on behalf of the Owners under or by reason of the Project Documents; for any deficit arising or any deficit remaining from a previous period; the creation of a reasonable contingency fund, reserves, working capital, and sinking funds as well as other costs and expenses relating to the Common Elements. Utility expenses may increase from the amount budgeted because of rate or usage increases or fuel cost adjustments, and other budgeted line items may increase from time to time. In the event the cash requirements for utility expenses or any other recurring expense exceeds the budget amount for that particular expense line item, or in the event the cash requirements for Common Expenses exceed the aggregate assessments made pursuant to this Section 4.3, the Board may from time to time and at any time make pro rata increases in the monthly assessments to include amounts sufficient to recoup operating budget deficits for utility expenses or other recurring budget line item expenses or Common Expenses in the aggregate, as well as including increased current operating expenses. The adoption of the annual budget shall establish the regular monthly Assessments for the next fiscal year. Copies of the annual budget shall be given to each Owner. The failure or delay of the Board to prepare any annual budget or to deliver copies of a budget to each Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay Common Expenses whenever the annual budget is determined, and in the event of any delay or failure to establish any annual budget each Owner shall continue to pay the regular monthly Assessments, at the rate established for the previous fiscal year, until a new annual budget is established.

4.4 Obligation of Declarant for Assessments and Maintenance. During the Declarant Control Period, the Declarant shall be responsible for Declarant's pro rata contribution

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toward the expense of administration, maintenance, and repair and other expenses lawfully agreed upon by the Board, which shall be deemed to be equal to the difference between the amount of the annual budget (for each year or part of a year during the Declarant Control Period) and the Assessments received from the Unit Owners in the Project. So long as Declarant is responsible for the maintenance of the Project as provided herein, Declarant shall not be required to pay the monthly Assessments for any Units owned by Declarant. During the Declarant Control Period, Declarant shall provide any additional funds necessary to pay actual cash outlays required to fund current operating expenses of the Association. In the event of a partial year during the Declarant Control Period, Declarant's pro rata contribution to the budget shall be determined on a proportionate basis calculated on the number of days during the Declarant Control Period as opposed to the total number of days during that fiscal year. After the Declarant Control Period is terminated, Declarant shall pay the regular monthly Assessments for all Units owned by Declarant.

4.5 Regular Monthly Assessments. Except as otherwise provided in Section 4.4 herein with respect to the obligations of Declarant during the Declarant Control Period, all Owners shall be obligated to pay the Assessments imposed by the Board. The total amount of the estimated funds required from Assessments to operate the Project set forth in the annual budget adopted by the Board shall be assessed against each Owner in proportion to the Percentage Ownership Interest of each Owner as set forth herein, that figure to be divided by 12 to determine the regular monthly Assessment; provided however, that Assessments based on Percentage Ownership Interests may be rounded off to the nearest dollar figure. The Assessments shall be secured by a lien against the Unit, as provided herein.

4.6 Special Assessments. In addition to the regular monthly Assessments authorized above, the Board may levy in any year one or more special Assessments applicable to that year only for the purpose of paying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the Common Elements, including fixtures and personal property related thereto, or to pay any unanticipated or underestimated expense or other action or undertaking normally covered by a regular Assessment (and, where necessary, for taxes assessed against the Common Elements or the Project as a whole). Special Assessments shall be assessed against each Owner in proportion to the Percentage Ownership Interest of that Owner as set forth herein. Special Assessments may also be levied against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration and the other Project Documents including actual attorneys' fees and costs. However, there shall be no special Assessments for additions, alterations or improvements of or to the Common Elements, requiring an expenditure by the Association in excess of \$20,000 in any one fiscal year without the prior approval of the majority of Owners. Such limitations shall not be applicable, however, to special Assessments for the replacement, repair, maintenance or restoration of any Common Elements which are to be paid for by the Association according to the Declaration and these Bylaws.

4.7 Assessment Lien. Declarant hereby reserves and assigns to the Association, without recourse, a vendor's lien with power of sale against each Unit to secure the payment of any regular or special Assessment which may be levied pursuant to the terms hereof, and the expenses incurred in connection with the enforcement thereof, including, without limitation, interest at the rate provided in this Section 4.7, costs and reasonable attorney's fees. Any such lien shall be and is subordinate and inferior only to the following: (a) assessments, liens and charges in favor of the State of Texas and any political subdivision thereof for taxes past due and unpaid on such Unit; and (b) amounts due under any Mortgage duly recorded prior to the recordation of any notice of assessment lien as provided in this Section 4.7. All sums assessed but unpaid for the share of Assessments chargeable to any Unit, including interest thereon at the maximum rate permitted by law per annum from the date the Assessments are due until the Assessments are paid, subject to the provisions hereof limiting the interest contracted for, charged or received to the maximum permitted by applicable law. The Board of Directors or the Management Agent may (but shall not be required to) prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed by one of the members of the Board or by one of the officers of the Association or by a representative of the Management Agent and may be recorded in the office of the County Clerk of Harris County, Texas. Such lien may be enforced by the either judicial or non-judicial foreclosure of the defaulting Owner's Unit by the Association in like manner as a mortgage on real property subsequent to the recording of the notice provided for above, and

the Association in that notice is hereby granted the power to name and appoint a trustee for the purpose of conducting and carrying out the terms of the power of sale granted herein. In any such proceeding, the Owner shall be required to pay the costs, expenses and attorney's fees 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 these liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil Statutes, and such Owner hereby expressly grants to the Association the private power of sale in connection with those liens. The Association may also temporarily suspend the Association membership rights of any Owner who is in default in payment of any Assessment in accordance with the Bylaws.

4.8 Date of Commencement of Assessment; Due Dates. Except as provided in Section 4.4 herein, 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 the special Assessment delivered by the Association to each Owner; provided, however, the due date shall in no event be less than 30 days subsequent to the date of such notice. Any Assessment not paid within five days after the due date shall be subject to a \$10.00 late charge. The Board in its discretion may increase the late charge for overdue assessments from time to time and may establish such other charges (including interest at a rate not to exceed the maximum lawful rate) applicable to Assessments that are not timely paid as the Board may deem necessary or advisable.

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

4.10 Separate Taxation. Each Unit, together with its Percentage Ownership Interest in the Common Elements, shall be deemed to be a separate and distinct entity for the purpose of the assessment and collection of ad valorem taxes, assessments and other charges of the State of Texas, 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 the 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 Percentage Ownership Interest and, in that event, those 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 those taxes, to be paid no later than 30 days prior to the delinquency thereof.

4.11 Common Expenses Fund. The Assessments collected shall be deposited into a Common Expense fund to be held and used for the payment of the Common Expenses, for other special purposes for which the Assessments were made, and any remainder may be used for any other purpose approved by the Board or by the Members. Additionally, a working capital fund must be established for the initial months of the Project operation equal to at least a two months' estimated Assessments for each Unit. Amounts paid into this fund should not be considered as advance payments of regular assessments. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Unit and maintained in a segregated account for the use and benefit of the Association. The contribution to the working capital fund for each unsold Unit shall be paid to the Association by the Declarant within 60 days after the date of the conveyance of the first Unit in the Project. The Declarant shall reimburse itself for such payments from the funds collected at closing when the unsold Units are sold.

ARTICLE 5 INSURANCE: FIRE AND OTHER CASUALTY; EMINENT DOMAIN

5.1 Insurance. The Association shall obtain and maintain at all times insurance of the type and kind provided hereinafter, including such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to the Building, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. The insurance shall be carried in blanket policy form naming the Association and all Mortgagees as the Insured. In addition, each policy or policies shall identify the interest of each Unit Owner and shall provide for a standard, noncontributory mortgage clause in favor of each Mortgagee. Further, the policy shall insure against loss or damage by fire, vandalism, malicious mischief or such other hazards as are covered under standard extended coverage provisions for 100% of the replacement cost of the Building (including the Units) and the Common Elements (including the General and Limited Common Elements), exclusive of the Land, foundations, excavation, and other items normally excluded from such coverage, and against such other hazards and for such amounts as the Board may deem advisable. The policy must also cover fixtures, equipment and other property inside individual Units if they are or will be financed by a Mortgage, whether or not such property is part of the Common Elements. Each Owner irrevocably designates the Association, as attorney-in-fact, to administer and distribute such proceeds as is elsewhere provided in this Declaration. Such policies shall contain the standard mortgage clause or equivalent endorsement (without contribution), which is commonly accepted by Institutional Lenders in Texas and which appropriately names FNMA and FHLMC if such corporations are holders of Mortgages or Units in the Project. Such insurance policy or policies shall also provide that they cannot be cancelled or substantially modified by either the Insured or the insurance company until after 10 days' prior written notice to the Association and each Mortgagee. The Board shall, upon request of any Mortgagee, furnish a certified copy of each blanket policy and a separate certificate identifying the interest of the Mortgagor. Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC; or (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds. The policies also must provide that the insurance is not prejudiced by any act or neglect of

Individual Unit Owners which is not in the control of such Owners collectively; that the right of subrogation against Unit Owners will be waived; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss. The requirements stated in this Section 5.1 are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.

(a) The insurance policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) in the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location (or such greater amount as deemed prudent based on the nature of the property);
- (3) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available; and
- (4) when it can be obtained, construction code endorsements, if there is a construction code provision that requires changes to undamaged portions of buildings even when only part of the Project is destroyed by an insured hazard.

(b) The Association shall keep a comprehensive policy or policies of public liability insurance covering the Common Elements and such policy or policies shall include a "Severability of Interest Endorsement" or equivalent coverage which will preclude the insurer from denying the claim of a Unit Owner because of negligent acts by the Association, its Board of Directors or another Unit Owner. Such policy or policies shall be in amounts of not less than \$100,000.00 per person, \$300,000.00 per accident and \$50,000.00 for property damage, plus an umbrella policy for not less than \$1,000,000.00 for all claims for personal injury, including death, and/or property damage arising out of a single occurrence. The policy shall include coverage for water damage liability; liability for non-owned and hired automobiles; liability for property of others; bodily injury and property damage that results from the operation, maintenance, or use of the Project's General Common Elements; any legal liability that results from law suits related to employment contracts to which the Association is a party; and such other coverage as is customarily deemed necessary with respect to projects similar in nature. Such policies must provide that they may not be cancelled or substantially modified by any party without at least 10 days prior written notice to the Association and each Mortgagee.

(c) The Association shall keep a policy or policies of (i) liability insurance insuring the Board, Officers and employees of the Association against any claims, losses, liabilities, damages or causes of action arising out of, or in connection with, or resulting from any act done or omission to act by any such person or entities, (ii) worker's compensation as required under the laws of the State of Texas, and (iii) such other insurance as deemed reasonable and necessary by the Board in order to protect the Project, the Unit Owners and the Association.

(d) In the event FNMA or FHLMC become a Mortgagee or any Institutional Lender so requests in writing, then blanket fidelity bonds shall be required to be maintained by the Association for all officers, directors, and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association. Where the Management Agent has the responsibility for handling or administering funds of the Association, the Management Agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Management Agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to 3 months' aggregate Assessments on all Units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums on all bonds required herein, except those

maintained by the Management Agent, shall be paid by the Association as a Common Expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association and to FNMA or FILMC.

(e) The Association shall be responsible for obtaining insurance upon the Units, including all fixtures, installations or additions thereto contained within the unfinished interior surfaces of the perimeter walls, floors and ceilings of such Unit, as initially installed or replacements thereof. The Association shall not be responsible for procurement or maintenance of any insurance covering the liability of any Owner not caused by or connected with the Association's operation or maintenance of the Project. Each Owner may obtain additional insurance at his own expense for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner and casualty and public liability insurance coverage within each Unit are specifically made the responsibility of each Owner and each Owner must furnish a copy of his insurance policy to the Association.

(f) Any insurance obtained by the Association or an Owner shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against the Owners, Association or their respective servants, agents or guests.

The premiums for all insurance acquired by the Association pursuant to the provisions of this Section 5.1 shall be a Common Expense.

5.2 Casualty Loss. In the event of a fire or other casualty causing damage or destruction to the Building, the Board shall determine whether the loss involves the whole or more than two-thirds of the Building. Unless another method is required by law, this determination shall be made on the basis of whether the cost of necessary repair or reconstruction would exceed two-thirds of the cost of reconstructing the Building as it existed prior to the fire or other casualty.

(a) In the event of fire or other casualty which does not involve more than two-thirds of the Building, unless otherwise unanimously agreed to by the Owners within 45 days after the fire or other casualty, the Building shall be repaired and reconstructed substantially in accordance with the original plans and specifications for the Building, in accordance with the provisions of this Section 5.2.

(b) In the event that fire or other casualty comprises the whole or more than two-thirds of the Building, unless otherwise unanimously agreed by the Owners within 45 days after the fire or other casualty, all proceeds of insurance policies carried by the Board and all accrued Common Expenses and collected Assessments shall be paid to the account of the Owners or their Mortgagees, as provided in Section 5.4, in proportion to the Percentage Ownership Interest of each Owner, and the condominium regime established by this Declaration shall terminate.

(c) In the event that it is determined that the Building will be repaired and reconstructed, then all proceeds of insurance policies carried by the Board with respect to the fire or other casualty shall be paid to a bank, as trustee, selected by the Board, which bank shall have trust powers and a capital and surplus in excess of \$10,000,000.00, and shall be insured by the Federal Deposit Insurance Company (or its successors) and located in Harris County, Texas, to be held in trust for the benefit of the Owners and their Mortgagees as their respective interests may appear. The Board shall thereupon contract to repair or reconstruct the damaged portions of all Units, the Building, and Common Elements in accordance with the original plans and specifications, and the funds held in the trust fund in such bank shall be used for this purpose and disbursed by the Board in accordance with the terms of the contract of repair and rebuilding.

In the event that the insurance proceeds are insufficient to cover the repair or reconstruction as provided in this Section 5.2, the building costs in excess of the insurance proceeds shall be assessed against and paid by all of the Owners of the Units which are to be repaired or reconstructed on a prorata basis, in proportion to the relation each such Owner's Percentage Ownership Interest bears to the aggregate Percentage Ownership Interests of all the Owners of the Units to be repaired or reconstructed. This special Assessment shall not require the consent of the Owners, and if any Owner fails to pay the special Assessments when due, the Board may upon resolution stating the situation and the cost of the work, proceed with the repair or reconstruction at the expense of such Owner. Any payments

made by the Board shall in no way release the Owner who has failed to make payment of the special Assessment, and the special Assessment shall be a lien on that Owner's Unit. The provisions of this Section 5.2 may be changed only by unanimous resolution of the Owners, adopted subsequent to the date on which such fire or casualty loss occurs.

Each Owner shall be responsible for the repair, reconstruction, and replacement of all personal property and other property not a Common Element, including, but not limited to the furniture, furnishings, decorative light fixtures and appliances located in the Unit. Each Owner shall be responsible for the costs not otherwise covered by insurance carried by the Board caused by his negligence or misuse or by the negligence or misuse of his tenants or other occupants of the Unit, or by his or their guests or invitees, and shall, to the extent not covered by insurance collected by the Board, indemnify the Board and all Owners against any such costs of reconstruction, repair and replacement of any portion of the Building.

5.3 Condemnation. If all or any part of the Project is condemned or taken or threatened to be taken by any authority having the power of eminent domain (whether permanent or temporary) the Association (acting through the Board) and each Mortgagee shall be entitled to participate in proceedings incident thereto at their respective expense. The Board shall give notice of the existence of the proceeding to all Owners and to all Mortgagees known to the Board to have an interest in any Unit. The expense of participation in the proceedings by the Board shall be a Common Expense. The Board is specifically authorized to obtain and pay for the assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board in its discretion deems necessary or advisable to aid or advise it in matters relating to the proceedings. All damages or awards for any such taking shall be deposited with the Association, acting as trustee and as agent and attorney-in-fact for the Owners, and such damages or awards shall be applied or paid as provided herein.

In the event that an action in eminent domain is brought to condemn or otherwise take a portion of the Common Elements (together with or apart from any Unit), the Association, in addition to its general powers, shall have the sole authority to determine whether to defend or resist any such proceedings, to make any settlement with respect thereto; or to convey those Common Elements to the condemning authority in lieu of the condemnation proceeding. With respect to any taking of Common Elements only, all damages and awards shall be determined for the taking as a whole and not for each Owner's interest therein. After the damages or awards for the taking are determined, the damages or awards which are to be paid to each Owner under this Section 5.3 shall be paid in accordance with Section 5.4.

In the event that less than two-thirds of the total number of Units is condemned or otherwise taken, then the damages and awards for the taking shall be determined for each Unit and the following shall apply:

(a) The Board shall determine which of the Units damaged by the taking may be made tenantable for the purposes set forth in this Declaration, taking into account the nature of the Project and the reduced size of each Unit so damaged.

(b) The Board shall determine whether it is reasonably practicable to operate the remaining Units of the Project, including those damaged Units which may be made tenantable in the manner provided in this Declaration.

(c) In the event that the Board determines that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be made tenantable, then the separate estates shall be deemed to be regrouped and merged with the Project into a single estate owned in undivided interests by all Owners as tenants-in-common in the Percentage Ownership Interests previously owned by each Owner in the Common Elements.

(d) In the event that the Board determines that it will be reasonably practicable to operate as a condominium the undamaged Units and the damaged Units which can be made tenantable, then the damages and awards made with respect to each Unit which has been determined to be capable of being made tenantable shall be applied to repair and reconstruct the Units so as to make them tenantable. 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. With respect to those Units which may not be made tenantable, the award made with respect to those Units shall be paid to the respective Owners of those Units or their Mortgagees, as provided in Section 5.4. The remaining portion of the Units, if any, shall become a part of

the Common Elements and repair and use of those Units shall be determined by the Board. Upon the payment of the award for the account of the Owners as provided herein, those Units shall no longer be a part of the Project as Units, and the Percentage Ownership Interests in the Common Elements with respect to each remaining Unit which shall continue as part of the Project shall be equitably adjusted to distribute the ownership of the undivided interests in the Common Elements among the reduced number of Owners.

If the entire Project is condemned or otherwise taken, or two-thirds or more of the Units are taken or damaged, by such taking, all damages and awards shall be paid to the accounts of the Owners of Units, as provided herein, in proportion to their Percentage Ownership Interests in the Common Elements and this condominium regime shall terminate upon such payment.

5.4 Board to Represent Owners; Payment of Awards and Damages. The Association (acting through the Board) is hereby designated to represent the Owners in any proceedings, negotiations, settlements, or agreements under this Article 5, and each Owner by acceptance of the deed to his Unit hereby appoints and constitutes the Board as the true and lawful attorney-in-fact of each Owner for this purpose. Any damages or awards provided in this Article 5 to be paid to or for the account of any Owner by the Board, acting as trustee, shall be applied first to amounts due under any Mortgage; second, to the payment of any taxes or assessments by governmental authorities past due and unpaid with respect to that Unit; third, to the payment of any Common Expense or unpaid Assessments charged to or made against the Unit; and finally to the Owner of the Unit, in proportion to his Percentage Ownership Interest.

5.5 Termination After Casualty or Condemnation. Upon termination of the condominium regime as provided in Sections 5.2 or 5.3, the separate estates shall be deemed to be regrouped and merged with the condominium regime into a single estate owned in undivided interest by all Owners as tenants-in-common in the Percentage Ownership Interests previously owned by each Owner in the Common Elements. Thereafter the Board shall serve as agent and attorney-in-fact for each of the Owners, and with the approval of the holders of any remaining unreleased Mortgages, shall sell the entire Project on terms satisfactory to the Board, free from the effect of this Declaration, which shall terminate upon the conveyance of the Project to the purchaser. The net proceeds of such sale shall be applied in the manner provided in Section 5.4 herein.

ARTICLE 6 UTILITIES

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

(a) Each Owner shall pay for his own utilities which are separately metered and billed to each Unit by the respective utility companies or submetered and billed to each Unit by the Association. Any utility expenses billed to each Unit by the Association shall be deemed to be special Assessments hereunder and shall be secured by the lien described in Section 4.7. 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.

(b) Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, or flues (such items being hereinafter collectively called the "connections") are located or installed within the Project, which connections, or any portion thereof, lie in or upon more than one Unit, Declarant reserves for the use and benefit of the Association, the Management Agent, and the agents and employees of either, 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 the connections, or any portion thereof lie, to repair, replace and generally maintain the connections as and when reasonably necessary; provided, however, the exercise of such easement rights shall be in a manner reasonably calculated to cause as minimal interference with the continued use and occupancy of the Units so affected by the Owners thereof, while still adequately serving the purposes for which they are granted.

(c) Whenever connections are located or installed within the Project, which connections serve more than one Unit, the Owner of each Unit served by the connections shall be

entitled to the full use and enjoyment of such portions of the connections as service his Unit.

6.2 Use of Easement; Right of Access to Units. The easement in favor of the Association is reserved in Section 6.1(b) and shall be used in non-emergency circumstances and only during normal working hours only upon reasonable advance notice to the Owner prior to entry. However, the same parties shall also have access to each Unit pursuant to this easement at all times without notice as may be necessary to make emergency repairs. Any damage to the interior or any part of a Unit resulting from the use of this easement shall be a Common Expense; provided however, that any damage which results from the negligence of an Owner, or of the tenants or other occupants of his Unit or his or their guests or invitees, shall be the responsibility of that Owner. Any Unit so damaged shall be restored to substantially the same condition in which it existed prior to the damage. All exterior entrance doors to a Unit shall be coordinated with a master key system for the Project, and no Owner shall change or add any lock which would interfere with the operation of the system, unless he simultaneously furnishes the Board or Management Agent a duplicate key. There shall be no restriction upon any Owner's right of ingress and egress to and from that Owner's Unit.

6.3 Association Duties. The Association shall maintain all utility installations located in the Common Elements and those which may be located within a Unit but which serve another Unit or Units and for which an easement is reserved in Section 6.1(b), except for those installations maintained by public, private or municipal utility companies. The Association shall pay all charges for utilities supplied to the Project except those metered or submetered or otherwise charged separately to the Units.

ARTICLE 7 AMENDMENT OF DECLARATION; ALTERATION OF BOUNDARIES; TERMINATION

7.1 Amendment of Declaration. Except as otherwise provided herein, this Declaration may be amended by an affirmative vote of Members having not less than 67% of the total number of votes of all Members, and the prior written approval of Mortgagees representing at least 51% of the votes of the Units that are subject to mortgages held by eligible holders. If, however, the proposed amendment is not a material (as that term is defined in Section 402.02 of the FNMA Legal Requirements in effect as of this date), such as the correction of a technical error or the clarification of a statement, the approval of a Mortgagee shall be conclusively presumed when that Mortgagee fails to submit a response to any written proposal for such an amendment within 30 days after notice of the proposal is given to the Mortgagee. Notwithstanding the foregoing, when the Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project, the eligible Mortgagees representing at least 67% of the votes of the Mortgaged Units must approve the amendment in writing. The subject matter of the proposed amendment shall be stated in a notice of the meeting of the Members at which the proposed amendment is to be considered. An amendment shall be effective when it has been (a) signed and acknowledged by the requisite number of votes of all Members (though not necessarily the same members who voted for the amendment), (b) signed by the required number of Mortgagees, and (c) recorded in the office of the County Clerk of Harris County, Texas. Copies of the recorded amendment shall be sent to each Owner. Except as provided in Section 7.2 herein, however, this Declaration may not be amended, changed or otherwise modified so as to change the Percentage Ownership Interest of any Owner, except with the written consent of that Owner and the holder of the Mortgage on the Units which would be affected by the change.

7.2 Alteration of Boundaries. Notwithstanding anything to the contrary in this Declaration, the Declarant shall have the right at any time and from time to time to divide any one or more Units then owned by Declarant into two or more Units, or to consolidate Units it owns, by filing in the Office of the County Clerk of Harris County, Texas a document describing and depicting the new Units and the Percentage Ownership Interest pertaining to such new Unit, and in that event the Percentage Ownership Interest pertaining to each new Unit shall be increased or reduced in proportion to the number of square feet of floor area in each new Unit to the number of square feet of floor area in the original Unit or Units. No Owner other than Declarant, however, shall have the right to divide a Unit or to consolidate a Unit with another Unit without the prior written consent of the Board. Except

as otherwise provided in this Declaration, if written consent is given by the Board to the division of a Unit by an Owner, he shall then have the same right as the Declarant with respect to dividing or consolidating such Unit or Units.

7.3 Termination. Upon the affirmative vote of not less than 67% of the number of votes of all Members, this condominium regime may be waived, and the separate estates regrouped and merged with the condominium regime owned in undivided interest by all Owners as tenants-in-common in the Percentage Ownership Interests previously owned by each Owner; provided that Mortgagees representing at least 67% of the votes of the Units that are subject to mortgages held by eligible holders agree to accept as security the undivided portions of the Project owned by the Owners or otherwise consent to such regrouping and merger. Each Owner at the time of any such regrouping and merger shall subsequent thereto own an undivided interest in the Project equal to his Percentage Ownership Interest. After such regrouping and merger, the Board shall serve as agent and attorney-in-fact for the Owners and (with the approval of the holders of all unreleased Mortgages) may sell the entire Project free from the effect of this Declaration, which shall terminate upon the conveyance of the Project to the Purchaser, on terms satisfactory to the Board. The net proceeds of such sale shall be applied in the same manner provided in Section 5.4 herein. Each Owner hereby irrevocably appoints the Board as that Owner's agent and attorney-in-fact for purposes of effecting the provisions of Sections 5.5 and 7.3 of this Declaration; the power hereby granted to the Board shall be, and is, a power coupled with an interest and is irrevocable.

7.4 Correction of Error. Declarant reserves, and shall have the continuing right, prior to the completion of construction of the Building, without the consent of the other Owners or any Mortgagee to amend this Declaration or the other Project Documents but only for the purpose of resolving or clarifying any ambiguities or conflicts, or correcting any inadvertent misstatements, errors or omissions, or to comply with the requirements of FHLMC, FNMA, the Veterans Administration or the Federal Housing Administration, or any Institutional Lender, provided that no such amendment shall change the stated number of Units or Percentage Ownership Interest in the Common Elements attributable thereto.

ARTICLE 8 MORTGAGEE PROTECTION

8.1 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 Mortgage on any Unit made in good faith and for value, but all of the 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.

8.2 Notice to Mortgagees. The holder, insurer or guarantor of the Mortgage on any Unit shall be entitled to receive the following notices in writing from the Association:

- (a) Notice of any proposed change in the Project Documents, which notice shall be given at least 30 days prior to the effective date of such change;
- (b) Notice of default by the Owner or grantor of any Mortgage on a Unit (the beneficial interest in which is held by that Institutional Lender) in the performance of such Owner's or grantor's obligations under the Project Documents, which default is not cured within 60 days.
- (c) Notice of any damage or destruction to any Unit or any part of the Common Elements subject to a Mortgage (the beneficial interest in which is held by that Mortgagee), which damage exceeds \$2,500.00, which notice shall be given immediately upon the Board's obtaining knowledge of such damage or destruction;
- (d) Notice of any condemnation or taking (or of a threat thereof) of any portion of the Common Elements or facilities or improvements thereon, which notice shall be given immediately upon the Board's obtaining knowledge of such condemnation or taking or threat thereof; and
- (e) Notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

To obtain this information, the Mortgage holder, insurer, or guarantor should send a written request to the Association stating both its name and address and the Unit on which it has the Mortgage.

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

8.4 Compliance with FHLMC and FNMA Regulations. The Declarant intends that the Project shall comply with all requirements of the FHLMC and the 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 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 those requirements.

ARTICLE 9 MISCELLANEOUS

9.1 Status Certificate. Any Owner or Mortgagee of a Unit shall be entitled upon written request to a statement from the Board or the Administrator of (a) the amount of Assessments made with respect to that Unit, (b) the amount of any unpaid Assessments with respect to that Unit, (c) any known defaults by that Owner under this Declaration, and (d) any amendments to this Declaration.

9.2 Notices. Any notice required to be given or given for any other reason under this Declaration shall be given in the following manner:

(a) If to an Owner, by United States mail, postage prepaid, addressed in the name of the Owner at the address of his Unit or by delivery in person to the Unit, or by mail to such other address previously delivered to the Board and the Administrator, if any;

(b) If to a Mortgagee, by United States mail, postage prepaid, addressed in the name of the Mortgagee at the address previously delivered to the Board and the Management Agent, or by delivery in person to that address;

(c) If to the Board, Management Agent or Association, by United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed (i) to the Board, (ii) to the Management Agent, and (iii) to the Association, at the address of the Project Office, or at such other address previously given to the person giving the notice, or by delivery in person to the President of the Association and to the Management Agent, if any.

9.3 Severability. If any provision of this Declaration is held to be invalid or unenforceable, then the validity of the remainder of this Declaration shall not be affected thereby, and so far as is possible effect shall be given to the intent manifested by the portion held invalid or unenforceable.

9.4 Enforcement; No Waiver. The Board or any Owner shall have the right, by action for damages or for injunctive relief, or both, and by any other proceedings at law or in equity, to enforce all terms, covenants, conditions, easements, restrictions, uses, liens, charges, obligations and other provisions of this Declaration, the Bylaws, and the other Project Documents; however, the failure to enforce any such provision shall in no event be deemed to be a waiver of the right to enforce that provision or any other provision thereafter.

9.5 Fiscal Year; Audit. The fiscal year of the Association, unless changed by the Board, shall be the calendar year. All books and records of the Association shall be kept in

accordance with good accounting procedures and the books, records, and financial statements of the Association shall be available for examination by any Owner or Mortgagee or the authorized representative of an Owner or Mortgagee during regular office hours at the Project Office. Any Mortgagee shall be allowed to have an audited statement prepared at its own expense.

9.6 Exclusion of Warranties. Declarant makes no warranties, express or implied, as to the Units or the Common Elements, except the warranty of title to each Unit as stated in the deed therefor, and any limited warranty made in writing to an Owner in connection with the purchase of a Unit. Any and all other warranties, express or implied, including without limitation, any warranty of habitability, merchantability, or fitness for a particular purpose, are excluded and waived.

Executed this 9th day of June, 1983.

REALFIN COMPANY

By: Albert E. Totah

Albert E. Totah

Its: Secretary

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on June 9, 1983, by Albert E. Totah, the Secretary of Realfin Company, a Texas corporation, on behalf of said corporation.

Dixie Barron

Notary Public in and for
the State of Texas

DIXIE BARRON

Notary Public State of Texas

My Commission Expires June 28, 1985

Bonded by L. Alexander Lovett, Lawyers Surety Corp.