

repair or replacement of any capital improvement to the Project, then the vote or written consent of Members representing at least a majority of the voting power of the Association shall be required to approve and render effective a capital assessment levied by the Board to cover the cost of such expenditure. Such capital assessment shall be a charge against each Owner and his Condominium, representing a portion of the costs to the Association for installation, construction, repair or replacement of any capital improvement on the Project which the Association may from time to time authorize. Such charge shall be assessed to the Owners according to the percentage interest of each in the Common Elements. Upon collection, such capital assessment shall be placed in a separate account segregated from other funds of the Association and designated for the specific purposes set forth in the resolution or other document evidencing the approval of such capital assessment.

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 Association 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 clean 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.

B. Each Owner shall also, at such Owner's own expense, keep the balcony and the interior of the patio area (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.

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.

(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.

(h) No Owner shall lease his Condominium for an initial term of less than six (6) months nor for subsequent terms of less than thirty (30) days. Any lease agreement shall be required to provide that the terms of

the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his unit.

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 (i) permitted under the laws of the State of Texas, and (ii) 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.

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; Powers to Enforce Declaration of Owners.

A. 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:

(i) 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

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

Notwithstanding the foregoing provisions, prior to the use of summary abatement or similar means to enforce any rule or regulation adopted by the Board, the Declaration or any other covenant, condition or restriction against a Condominium or its use, judicial proceedings must be instituted before any items of construction can be altered or demolished. The failure of any Owner to comply with the provisions of the Declaration, Bylaws or Articles of Incorporation of the Association will give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages, or for injunctive relief, or both, to the extent permitted under the laws of the State of Texas. 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; such lien and security interest shall be subordinate to the lien of any Mortgage affecting any such Apartment. 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.

B. If the Board has failed to act to enforce any provision of this Declaration, the Bylaws or decisions made by the Association pursuant thereto, for thirty (30) days after written demand by any Owner, then any such Owner 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. Each Owner shall have similar rights of action against the Association.

5.07. Advances. 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.

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, shall be given written notification by the Association of 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. Any Eligible Holder upon written request to the Association (such request to state the name and address of such Eligible Holder and the Apartment number), shall be entitled to timely written notice of:

- (i) Any proposed amendment of this Declaration affecting a change in (a) the boundaries of any Apartment or the exclusive easement rights appertaining thereto, (b) the interests in the general or limited common elements appertaining

to any Condominium or the liability for common expenses appertaining thereto, (c) the number of votes in the Association appertaining to any Condominium or (d) the purposes to which any Condominium or the Common Elements are restricted;

- (ii) Any proposed termination of the Project;
- (iii) Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Holder;
- (iv) Any delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to the Mortgage of such Eligible Holder where such delinquency has continued for a period of sixty (60) days;
- (v) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association pursuant to the requirements of any such Eligible Holder; and
- (vi) Any proposed action which would require the consent of a specified percentage of Eligible Holders as specified in Section 5.09 or Section 8.06 hereof.

B. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the Eligible Holders of Mortgages on Condominiums to which at least fifty-one percent (51%) of the votes of Condominiums subject to Mortgages held by such Eligible Holders are allocated, is obtained.

C. Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the Project shall require the approval of the Eligible Holders of Mortgages on Condominiums to which at least fifty-one percent (51%) of the votes of Condominiums subject to Mortgages held by such Eligible Holders are allocated.

D. No reallocation of interests in the Common Elements resulting from a partial condemnation or partial destruction of the Project may be effected without the prior approval of the Eligible Holders holding Mortgages on all remaining Condominiums whether existing in whole or in part and which have at least fifty-one percent (51%) of the votes of such remaining Condominiums subject to Mortgages held by such Eligible Holders.

E. Any Eligible Holder shall, upon written request, be entitled to receive an audited financial statement of the Association for the immediately preceding fiscal year, free of charge to the party so requesting within a reasonable time following such request.

F. Any Mortgagee who obtains title to a Condominium pursuant to the remedies provided in a Mortgage or foreclosure of a Mortgage shall not be liable for such Condominium's unpaid dues or charges which accrue prior to the acquisition of title to such Condominium by the Mortgagee; any such unpaid dues or charges may be reallocated and assessed to all Condominiums as a common expense.

G. Except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or Common Elements of the Project, unless at least two-thirds (2/3) of the Mortgagees (based upon one vote for each Mortgage owned), or Owners (other than the Developer of the 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 Condominium for the purpose of:
 - (a) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or
 - (b) Determining the pro rata shares 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); or
- (v) Use hazard insurance proceeds for losses to any condominium property (whether to Apartments or to Common Elements) for other than the repair, replacement or reconstruction of such condominium property.

H. No provision of this Declaration, the Bylaws, the Articles of Incorporation, or other condominium constituent document shall entitle any Owner of a Condominium, or any other party, to priority over any rights of the Mortgagee of such Condominium pursuant to such Mortgagee's Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominiums and/or Common Elements.

5.10. Right of Access. The Association shall have a reasonable right of entry into each Apartment to effect emergency repairs or other work reasonably necessary for the proper maintenance or operation of the Project.

5.11. Use by Developer. Subject to the rights of the Mortgagees hereunder, 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. Subject to the rights of the Mortgagees hereunder, 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, and the display of signs thereon and therein. Developer shall have an easement over the Common Elements (i) for completion of the improvements for which provision is made in this Declaration, but only if access thereto is not

otherwise available, and (ii) for making repairs to improvements to the Project. Developer shall have the right to maintain facilities on the Project which are reasonably necessary to market the Condominium, including but not limited to, sales and management offices, model apartments, parking areas, and advertising signs.

5.12. Transfers.

A. 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 Condominium 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 A shall not apply to Developer.

B. The right of an Owner to sell, transfer, or otherwise convey a Condominium shall not be subject to any right of first refusal or similar restriction.

5.13. Right of Ingress and Egress. Each Owner shall have the right of ingress to and egress from his Apartment, which right shall be perpetual and appurtenant to the respective Condominium of which the Apartment is a part.

ARTICLE VI
INSURANCE

6.01. Maintenance of Hazard Insurance. The Board, on behalf of the Association, shall obtain, maintain and pay the premiums upon, as a common expense, a "master" or "blanket" type 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 Common Elements 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 one hundred percent (100%) of the insurable value (based upon current replacement costs) of the Common Elements, including fixtures, to the extent they are part of the Common Elements, building service equipment and supplies, and other common personal property belonging to the Association, but exclusive of the Land, foundations, excavation and other items normally excluded from coverage, (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 (or the Insurance Trustee named pursuant to Section 6.02 of this Declaration) as trustee for the use and benefit of the individual Owners (without naming them) in the proportions established in Section 2.04. Loss payable shall be in favor of the Association (or the Insurance Trustee), as a trustee, for each Owner and each such Owner's Mortgagee. Evidence of insurance shall be issued to each Owner and Mortgagee. All references herein to a "master" or "blanket" type policy of hazard insurance are intended to denote single entity condominium insurance coverage. In addition, any fixtures, equipment or other property within the Apartments which are to be financed by a Mortgage to be purchased by FNMA or FHLMC (regardless of whether or not such property is a part of the Common Elements) shall be covered in such "master" or "blanket" policy or policies. Such policy or policies must be consistent with the insurance laws of the State of Texas, including any political subdivision thereof having jurisdiction over the Project, and the coverage of such policy or policies shall be at least equal to such coverage as is commonly required by prudent institutional mortgage investing in the area in which the Project is located. 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 mortgagee clause endorsement, or equivalent endorsement (without contribution) which is commonly accepted by private institutional mortgage investors in the area in which the Project

is located in favor of the Mortgagee (and its successors and assigns) of each Apartment, if any, and which appropriately names FNMA and FHLMC if such corporations are Eligible Holders; (ii) provide that the insurance shall not be prejudiced by any act or neglect of any Owner which is not in the control of the Association; (iii) contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums, cancelled or substantially modified, without at least ten (10) days' prior written notice to the Association or the Insurance Trustee, as hereinafter defined, and the Mortgagee which is listed as a scheduled holder of a Mortgage in such policy or policies; (iv) contain the following endorsements, if available: Replacement Cost Endorsement, Agreed Amount and Inflation Guard Endorsement, Construction code endorsements (such as Demolition Cost Endorsements, Contingent Liability from Operation of Building Laws Endorsement, and Increased Cost of Construction Endorsement), and Steam Boiler Coverage Endorsement (\$50,000.00 per accident minimum coverage); (v) contain a recognition of any insurance trust agreement created pursuant to Section 6.02 of this Declaration; (vi) contain a waiver of the right of subrogation against Owners individually, and (vii) provide that such policy or policies shall be primary in the event an Owner has other insurance covering the same loss. All such policies shall afford, as a minimum, protection against the following:

- (a) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (b) in the event the Project contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and
- (c) all other perils which are customarily covered with respect to Projects similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available.

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 (the "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. The Insurance Trustee, on behalf of the Association, may be named as an insured under any policy or policies required by this Declaration. The Insurance Trustee, if any, shall have exclusive authority to negotiate losses under any such policy or policies. 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 6.08 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 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. Each Owner hereby irrevocably appoints the Association, or any Insurance Trustee, if one shall have been appointed, or any substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (i) the collection and appropriate disposition of the proceeds thereof; (ii) the negotiation of losses and execu-

tion of releases of liability; (iii) the execution of all documents and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in the trust for Owners and their Mortgagees, as their interests may appear.

6.03. Maintenance of Liability Insurance.

A. The Board, on behalf of the Association, shall obtain and maintain at all times a policy or policies of comprehensive general liability 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 and covering the Project, the Common Elements and individual Condominiums, 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.

B. Coverage limits of such liability insurance policy or policies shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use to the Project. However, such coverage shall be for at least \$1,000,000.00 for bodily injury including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy or policies shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Association.

C. Such policy or policies shall provide that they may not be cancelled or substantially modified, by any party, without ten (10) days' prior written notice to the Association and each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy or policies.

6.04. Flood Insurance. If any part of the Project is in a special flood hazard area, as defined by the Federal Emergency Management Agency, and for which flood insurance has been made available under The National Flood Insurance Program ("NFIP"), the Association shall, as a common expense,

obtain and pay the premiums upon a "master" or "blanket" policy of flood insurance on the Buildings and any other property covered by the required form of policy (the "Insurable Property"), in an amount deemed appropriate, but not less than the following:

- (a) the maximum coverage available under the NFIP for all Buildings and other Insurable Property within any portion of the Project located within a designated flood hazard area; or
- (b) one hundred per cent (100%) of current "replacement cost" of all such Buildings and other Insurable Property.

6.05. Fidelity Bonds.

A. The Board, on behalf of the Association, shall obtain and maintain at all times blanket fidelity bonds for all officers, directors, trustees, and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. Where the Association delegates some or all of the responsibility for the handling of funds to a Managing Agent, blanket fidelity bonds shall be obtained and maintained for the officers, employees, and agents of such Managing Agent handling or responsible for funds of, or administration on behalf of, the Association.

B. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the 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 three (3) months' aggregate assessments on all Condominiums plus reserve funds.

C. Fidelity bonds required herein shall meet the following requirements:

- (i) fidelity bonds shall name the Association as an obligee;

- (ii) 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;
- (iii) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a Management Agent for its officers, employees, and agents) shall be paid by the Association as a common expense; and
- (iv) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association or to any Insurance Trustee appointed pursuant to Section 6.02 of this Declaration and each servicer of Mortgages on behalf of FNMA.

6.06. 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 FHLMC and FNMA 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 "Class VI" or better by Best's Key Rating Guide 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 FHLMC or by FNMA, then the requirements of FHLMC and FNMA 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 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.

6.07. 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.

6.08. 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 any Mortgage, 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.

(e) Notwithstanding any other provision hereof, the proceeds shall be distributed on a reasonable and equitable basis.

6.09. 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. Subject to the provisions of the Act and Section 5.09E hereof, 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 Section 7.02, 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. Insufficiency 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 assessment for any deficiency. However, subject to any provision of the Act to the contrary, if Reconstruction of the Buildings comprises the whole or more than two-thirds (2/3rds) of the Project (exclusive of the Property) as determined by the Board, unless otherwise unanimously agreed upon by the Owners and the Mortgagees, the damage shall not be repaired or restored and the provisions of the following sentence shall control. In the event that the Owners and the Mortgagees do not elect to repair or rebuild any damage in accordance with the preceding sentence, the Board shall record, with the County Clerk of the county(ies) in which the Project is located, 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;

(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; and

(e) Notwithstanding any other provision hereof, no Apartment in the Project may be partitioned or subdivided without the prior written approval of the holder of each Mortgage on such Apartment.

ARTICLE VIII
MISCELLANEOUS

8.01. Eminent Domain. Subject to the provisions of Section 5.09 C hereof, the following provisions shall apply in the event of any taking of a portion of an Apartment or of the Common Elements by 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. The Association or the Insurance Trustee shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements or part thereof. Each Owner hereby appoints the Association and any Insurance Trustee as his attorney-in-fact for the purposes of this Section 8.01. The awards or proceeds for such taking shall be payable to the Association, or any Insurance Trustee, for the use of the Owners and their Mortgagees, as their interests may appear. Notwithstanding any other provision of this Declaration any distribution made as a result of any condemnation or termination of the Project shall be accomplished on a reasonable and equitable basis. 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. If any Apartment or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Mortgagee of such Apartment shall be entitled to timely written notice of any such proceeding or proposed acquisition and no provision hereof shall entitle the Owner of such Apartment or other party to priority over such Mortgagee with respect to the distribution to such Apartment of any award or settlement. 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 tenantable, 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 tenable, 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 the remaining portion of the Apartment in condition for use as a part of the Common Elements,

the additional funds required for such purposes shall be raised by assessments against all of the Owners who will continue as Owners of Apartments after the changes in the Project effected by the taking. Such assessments shall be made in proportion to the shares of such Owners in the Common Elements after the changes effected by the taking.

(c) If the market value of an Apartment prior to the taking cannot be determined by agreement between its Owner and Mortgagee and the Association within thirty (30) days after notice by any such party, such values shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Apartment; and a judgment of specific performance upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Owners in proportion to the shares of the Owners in the Common Elements as they existed prior to the changes effected by the taking.

(d) Subject to the provisions of Section 5.09 and Section 8.06 hereof, the changes in Apartments, in the Common Elements, in the Ownership of the Common Elements, and in shares of liability for common expenses which are effected by eminent domain, shall be evidenced by an amendment of this Declaration approved in accordance with the terms of this Declaration.

8.02. Audit. Any Owner may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Association.

8.03. Personal Property. The Board or Manager may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Owners in the same proportion as their respective interests in the Common Ele-

ments, and shall not be transferable except with a transfer of a Condominium. If personal property is for the use of Owners of Condominiums in only one separate portion of the Project, such personal property shall be owned only by such Owners. A transfer of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

8.04. No Partition. Except as otherwise permitted in Section 7.02 and subject to the provisions of Article V hereof, there shall be no judicial partition of the Project, nor shall Developer or any person acquiring any interest in the Project or any part thereof seek any judicial partition; provided, that if any Condominium shall be owned by two (2) or more co-tenants, as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants, and provided further that an action may be brought for partition by sale of the Project, if any of the following conditions exist:

(a) Three (3) years after damage or destruction to the Project which renders a material part thereof unfit for its use prior thereto, the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

(b) Except as may be otherwise provided in the Act, three-fourths (3/4ths) or more of the structures in the Project have been destroyed or substantially damaged, and Owners holding in the aggregate more than a fifty percent (50%) interest in the Common Elements are opposed to repair or restoration of the Project; or

(c) The Project has been in existence in excess of fifty (50) years, is obsolete and uneconomic, and Owners holding in the aggregate more than a sixty-seven percent (67%) interest in the Common Elements are opposed to repair or restoration of the Project.

In any event, and notwithstanding the foregoing provisions of this Section 8.04, no Apartment in the Project may be partitioned or subdivided without the prior written approval of the holder of each Mortgage on such Apartment, and the provisions of the Act with respect to partition shall be strictly complied with.

8.05. Effect and Interpretation. This Declaration shall run with the land, and shall continue in full force and effect until (a) it is terminated by a court of competent jurisdiction pursuant to law, (b) there is a total destruction of the improvements in the Project and a determination of the Owners not to rebuild the improvements, or a total abandonment of the Project by the Owners, (c) the Project is judicially partitioned in accordance with the provisions of Section 8.04 hereof, or (d) the Project is deemed owned in common by the Owners as provided in Section 7.02 hereof. Each purchaser by accepting a deed to a Condominium accepts the interest thereby conveyed subject to all of the provisions of this Declaration and agrees to be bound thereby. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium townhome project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

8.06. Amendment.

A. Subject to any applicable additional limitations imposed by Section 8.06 B or Section 8.06 C hereof, the provisions of this Declaration may only be amended at a meeting of the Owners at which the amendment is approved by the holders of at least sixty-seven percent (67%) of the ownership interests in the Common Elements and by Developer (so long as Developer owns any Condominium in the Project). Any amendment so approved shall be evidenced by an instrument in writing signed and acknowledged (i) by Developer alone, prior to recordation of the sale of any Condominium in the Project, or (ii) by the President of the Association and by Developer (so long as Developer owns any Condominium in the Project), which amendment shall be effective upon recordation in the Office of the County Clerk of the county(s) in which the Project is located.

B. The consent of Owners of Condominiums to which at least one hundred percent (100%) of the votes in the Association are allocated and the approval of the Eligible Holders of Mortgages on Condominiums to which at least sixty-seven percent (67%) of the votes of Condominiums subject to a Mortgage appertain shall be required to terminate the condominium regime.

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A. Subject to any applicable additional limitations imposed by Section 8.06 B or Section 8.06 C hereof, the provisions of this Declaration may only be amended at a meeting of the Owners at which the amendment is approved by the holders of at least sixty-seven percent (67%) of the ownership interests in the Common Elements and by Developer (so long as Developer owns any Condominium in the Project). Any amendment so approved shall be evidenced by an instrument in writing signed and acknowledged (i) by Developer alone, prior to recordation of the sale of any Condominium in the Project, or (ii) by the President of the Association and by Developer (so long as Developer owns any Condominium in the Project), which amendment shall be effective upon recordation in the Office of the County Clerk of the county(s) in which the Project is located.

B. The consent of Owners of Condominiums to which at least one hundred percent (100%) of the votes in the Association are allocated and the approval of the Eligible Holders of Mortgages on Condominiums to which at least sixty-seven percent (67%) of the votes of Condominiums subject to a Mortgage appertain shall be required to terminate the condominium regime.

- (xiii) Establishment of self-management by the Association when professional management had been required previously by an Eligible Holder.
- (xiv) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration, Bylaws or equivalent documents;
- (xv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (xvi) Any provisions that expressly benefit Eligible Holders.

D. If an addition or amendment to this Declaration, the Articles, the Bylaws or equivalent documents is not considered as a material change, such as the correction of a technical error or the clarification of a statement, an Eligible Holder who receives a written request to approve additions or amendments to this Declaration, the Articles, the Bylaws or equivalent documents, who fails to submit a response to any written proposal for an amendment within thirty (30) days shall be deemed to have approved such request. Notwithstanding any other provision hereof, an amendment of this Declaration may not alter or destroy an Apartment or a Limited Common Element without the consent of the Owners affected and the Owners' Mortgagees.

8.07. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

8.08. Power of Attorney. An irrevocable power of attorney coupled with an interest is granted by the Owners to the Board, acting on behalf of the Association, to the extent of the powers and rights given to the Board by the provisions of this Declaration.

