

3.7 OWNER MAINTENANCE. An Owner shall maintain and keep in repair the interior and patio and/or balcony space of his own Unit, including the fixtures thereof. All fixtures and equipment installed with the Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Unit, shall be maintained and kept in repair by the Owner thereof; and an Owner shall be obliged to promptly repair and replace any broken or cracked glass in windows and doors. An Owner shall be totally responsible for his own heating and cooling system.

3.8 ALTERATION. An Owner shall do no act nor any work that will impair the structural soundness and integrity of the Building or impair any easement or hereditament. No Owner shall in any way alter, modify, add to or otherwise perform any work whatever upon any of the Common Elements, Limited or General, without the prior written consent and approval in writing by the Board of Directors. Any such alteration or modification shall be in harmony with the external design and location of the surrounding structures and topography, and shall not be considered until submission to the Association of complete plans and specifications showing the nature, kind, shape, size, materials, color and location for all proposed work. The Board shall have the obligation to answer within thirty (30) days after receipt of notice of the proposed alterations. Failure to so answer within the stipulated time shall mean that there is no objection to the proposed alteration or modification. During the Construction Period, Declarant shall have the sole right to approve or reject any plans and specifications submitted for consideration by an Owner.

3.9 RESTRICTION OF OWNERSHIP. As a restriction of the ownership provisions set forth in Paragraph 1.1t, "Unit", an Owner shall not be deemed to own the unfinished surfaces of the perimeter walls, floors ceilings and roofs surrounding his Unit, nor shall such Owner be deemed to own the utilities running through his Unit which are utilized for, or serve, more than one (1) Unit, except as a tenant in common with the other Owners. An Owner

family, guests or invitees, and is not covered or paid for by insurance either on such Unit or the Common Elements, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject, pursuant to Article IV hereof.

3.11 SUBJECT TO DECLARATION AND BY-LAWS. Each Owner and the Association shall comply strictly with the provisions of this Declaration, the By-Laws and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief, or both, maintainable by the Association on behalf of the Owners or, in proper case, by an aggrieved Owner against another Owner or against the Association.

ARTICLE IV

MANAGEMENT AND ADMINISTRATION

4.1 BY-LAWS. The administration of this Condominium Property shall be governed by the By-Laws of BAYNEBRIDGE CONDOMINIUMS, INC., a non-profit corporation, referred to herein as the "Association". An Owner of a Condominium Unit, upon becoming an Owner, shall be a Member of the Association and shall remain a Member for the period of his ownership. The Association shall be managed by a Board of directors, duly appointed or elected, pursuant to the terms and conditions of the By-Laws. In addition, the Association shall enter into a management agreement upon the terms and conditions established in the By-Laws, and said management agreement shall be consistent with this Declaration.

4.2 DECLARANT CONTROL. Paragraph 4.1 notwithstanding, and for the benefit and protection of the Unit Owners and any First Mortgagees of record for the sole purpose of insuring a complete and orderly buildout as well as a timely sellout of the Condominium Project, the Declarant will retain control of and over the Association for a maximum period not to exceed August 1, 1987, or one hundred twenty (120) days from the closing of seventy-five percent

agreement with a term longer than three (3) years without majority Association approval upon relinquishment of Declarant control. At the end of the Declarant Control Period, the Declarant, through the Board of Directors, shall call the first (1st) annual meeting of the Association.

4.3 TEMPORARY MANAGING AGENT. During the period of administration of this Condominium Regime by Declarant, the Declarant may employ or designate a temporary manager or managing agent, who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by Declarant to him. The Declarant may pay such temporary manager or managing agent such compensation as it may deem reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses of this Condominium Regime and shall be paid out of the Association budget.

4.4 SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT. Every Owner and the Declarant shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following limitations, restrictions and provisions:

a. The right of the Association to publish rules and regulations governing use of the Common Areas and the improvements and facilities located thereon, and to establish and enforce penalties for infractions thereof;

b. The right of the Association to charge reasonable fees for the use of facilities within the Common Area, if such facilities are not used by all members equally;

c. The right of the Association to borrow money and mortgage the Common Area and improvements for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property; providing, however, that the rights of any such Mortgagee in such property shall be subordinate to the rights of the Owners hereunder, and in no event shall any such Mortgagee have the right to Common Area and facilities and in aid thereof to mortgage said property: providing, however, that the rights of

for any period during which any assessment against the Owner's Condominium Unit remains unpaid;

e. The right of Declarant or the Association after the Declarant Control Period to dedicate or transfer all or any part of the Common Area for utility easements to any public agency, authority or utility for the purposes, and subject to the conditions, of such agency, authority or utility. No such dedication or transfer shall be effective unless approved by all First Mortgagees and sixty-seven percent (67%) vote of the quorum of Owners present at a meeting of the Association specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Directors reflecting such vote of the Owners agreeing to such dedication or transfer and First Mortgagee approval has been duly recorded in the Condominium Records of Hays County, Texas;

f. The right of the Association to adopt, implement and maintain a private security system for the Premises consistent with applicable laws:

g. The right of the Association to establish rules and regulations governing traffic within the Common Area, and to establish sanctions for any violation or violations of such rules and regulations;

h. The right of the Association to regulate noise within the Premises, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise; and

i. The right of the Association to control the visual attractiveness of the property, including, without limitation, the right to require Owners to eliminate objects which are visible from the Common Area and which, in the Association's judgment, detract from the visual attractiveness of the Property.

4.5 MEMBERSHIP, VOTING, QUORUM, PROXIES.

a. MEMBERSHIP. Any person on becoming an Owner of a Condominium

CONDOMINIUMS during the period of such ownership and membership of the Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Board of Directors may, if it so elects, issue one (1) membership card to the Owner(s) of a Condominium Unit. Such membership card shall be surrendered to the Secretary whenever ownership of the Condominium Unit designated thereon shall terminate.

b. VOTING. Unit ownership shall entitle the Owner(s) to cast one (1) vote per Unit in the affairs of the Association, which vote will be weighted to equal the proportionate share of ownership of the Unit Owner in the Common Elements. Voting shall not be split among more than one (1) Unit Owner. The present number of votes that can be cast by the Unit Owners is twelve (12). The combined weighted votes calculated in accordance with Exhibit "C" shall equal one hundred percent (100%).

c. QUORUM. The majority of the Unit Owners as defined in Article I shall constitute a quorum.

d. PROXIES. Votes maybe cast in person or by proxy. Proxies may be filed with the Secretary before the appointed time of each meeting.

4.6 INSURANCE.

a. 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 any Condominium Buildings, 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

replacement cost of the Common Elements and the Units, and against such other hazards and for such amounts as the Board may deem advisable. Each Owner irrevocably designates the Owners Association, as Attorney In Fact, to administer and distribute such proceeds as is elsewhere provided in this Declaration. Such insurance policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after thirty (30) days prior written notice to each First Mortgagee. The Board of Directors shall, upon request of any First Mortgagee, furnish a certified copy of each blanket policy and a separate certificate identifying the interest of the Mortgagor.

b. The Association shall keep a comprehensive policy or policies of public liability insurance covering the Common Elements of the Project 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 a Unit Owner. Such policy or policies shall be in amounts of not less than One hundred Thousand Dollars (\$100,000.00) per person, Three Hundred Thousand Dollars (\$300,000.00) per accident and Fifty Thousand Dollars (\$50,000.00) property damage, plus an umbrella policy for not less than One Million Dollars (\$1,000,000.00) for all claims for personal injury, including death, and/or property damage arising out of a single occurrence; and the policy shall include water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other coverage as is customarily deemed necessary with respect to projects similar in nature.

c. The Association may keep a policy or policies of (i) liability insurance insuring the Board of Directors, 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) workmen's

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 Unit Owner not caused by or connected with the Association's operation or maintenance of the Project.

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

ARTICLE V

MAINTENANCE ASSESSMENTS

5.1 ASSESSMENTS FOR COMMON EXPENSES. All Owners shall be obligated to pay the estimated assessments imposed by the Association to meet the Common Expenses. Assessments for the estimated Common Expenses shall be due monthly in advance on or before the first (1st) day of each month. Failure to pay by the tenth (10th) day of each month shall require the imposition and assessment of a later charge at the maximum rate allowed by law. Contribution for monthly assessments shall be prorated if the ownership of a Condominium Unit commences on a day other than the first (1st) day of a month.

5.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, welfare and recreation of the residents in the Property, and in particular for the improvement, maintenance and preservation of the Property, the services and the facilities devoted to said purposes that are related to the use and enjoyment of both the Common Elements and the Units situated upon the Property. Such uses may include, but are not limited to, the cost to the Association of the following: all insurance, repair, replacement and maintenance of the Common Elements; fire, extended coverage, vandalism,

for the hot tub and storage space; roof and exterior surface of the Building; garbage pickup; pest control; street maintenance; outdoor lighting; security service for the Property; water and sewer service furnished to the Property by or through the Association; discharge of any liens on the Common Elements; and other charges required by this Condominium Declaration, or other charges that the Association is authorized to incur. In addition, the Association shall establish a reserve for repair, maintenance and other charges as specified herein.

5.3 DETERMINATION OF ASSESSMENTS. The assessments shall be determined by the Board of Directors based upon the cash requirements necessary to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements. This determination may include, among other items, taxes, governmental assessments, landscaping and grounds care, Common Area lighting, repairs and renovation, garbage collections, wages, water charges, legal and accounting fees, management costs and fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, expenses incurred in the operation and maintenance of recreation and administrative facilities, payment of any deficit remaining from a previous period and the creation of a reserve contingency fund. The omission or failure of the Board to fix the assessments for any month shall not be deemed a waiver, modification or a release of the Owners from the obligation to pay.

5.4 INITIAL ASSESSMENT AND MAXIMUM MONTHLY ASSESSMENT.

a. The monthly assessments shall be made according to each Owner's proportionate or percentage interest in and to the Common Elements provided in Exhibit "C" attached hereto.

b. As of January 1st of the year immediately following the conveyance of the first (1st) Condominium Unit to an Owner other than the Declarant, the Board of Directors may set the monthly assessment for the next succeeding twelve (12)-month period at an amount which shall not

special meeting to the Owners. By the assent of a sixty-seven percent (67%) vote of the quorum of Owners, present at such meeting, the monthly assessment may be set at whatever level such Owners approve. The new assessments shall become the basis for future annual increases, using the one hundred twenty percent (120%) formula, as above outlined.

c. The Board of Directors shall have authority to lower the monthly assessment, if it deems feasible.

5.5 SPECIAL ASSESSMENTS FOR IMPROVEMENTS. In addition to the annual assessments authorized above, at any time the Association may levy in any calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall be approved by a two-thirds (2/3) vote of the quorum of Owners voting in person or by proxy at a meeting duly called for this purpose. The Declarant will be treated as all other Unit Owners for purposes of special assessments.

5.6 COMMENCEMENT OF ASSESSMENTS. The monthly assessments provided for herein shall be due on the first (1st) day of the month. The assessments shall be prorated if the ownership of a Unit commences on a day other than the first (1st) day of the month. On Units owned by the Declarant, the assessments shall commence on the first (1st) day of the month after the Declarant Control Period is terminated. The Board shall fix the amount of the monthly assessments against such Unit at least thirty (30) days prior to January 1st of each year; provided, however, that the Board shall have a right to adjust the monthly assessments, as long as any such adjustment does not exceed the maximum permitted hereunder, with thirty (30) days' written notice given to each Owner. Written notice of the monthly assessment adjustment shall be sent to every Owner subject thereto. The due date shall be established by the Board, and unless otherwise provided or unless otherwise

5.8 LIEN FOR ASSESSMENTS.

a. All sums assessed but unpaid by a Unit Owner for its share of Common Expenses chargeable to its respective Condominium Unit, including interest thereon at ten percent (10%) per annum, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances, except only for:

(1) All taxes and special assessments levied by governmental and taxing authorities; and

(2) All liens securing sums due or to become due under any duly recorded mortgage vendor's lien or deed of trust.

b. To evidence such lien the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such notice shall be signed by one (1) of the Board of Directors and may be recorded in the Office of the County Clerk of Hays County, Texas. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association. Any such foreclosure sale is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Article 3810 of the Revised Civil Statutes of the State of Texas, or in any manner permitted by law. Each Owner, by accepting a deed to his Unit, expressly grants to the Association a power of sale, as set forth in said Article 3810, in connection with the assessment lien. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice of claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a

assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

d. In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without recourse, a vendor's lien against each Unit to secure payment of a common assessment or special assessment which is levied pursuant to the terms hereof. Said liens may be enforced by appropriate judicial proceedings and the expenses incurred in connection therewith, including, but not limited to, interest, costs and reasonable attorney's fees, shall be chargeable to the Owner in default. Such lien shall be subordinated and inferior to those liens listed in Subparagraph 5.8a(1) and (2).

e. Any encumbrancer holding a lien on a Condominium Unit may pay any unpaid Common Expense payable with respect to such Unit, and upon such payment, such encumbrancer shall have a lien on such Unit for the amount paid of the same rank as the lien of his encumbrance.

5.9 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded mortgage or mortgages granted or created by the Owner of any Condominium Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Unit. Sale or transfer of any Unit shall not affect the assessment lien; provided, however, that the sale or transfer of any Condominium Unit pursuant to a foreclosure, a deed in lieu of foreclosure, assignment in lieu of foreclosure under such purchase money or improvement mortgages or deeds of trust shall extinguish the lien of such assessments as to payments thereof coming due prior to such sale or transfer, except for claims for its pro-rata share of such assessments resulting from a reallocation among all Units, which reallocation, if necessary, will require a readjustment of the common assessment as provided in Paragraph 5.4b. No sale or transfer shall relieve such Condominium Unit, or the Owners thereof, from

setting forth the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessments, the date of such assessment and the due date, credit for advance payments or for prepaid items, including, but not limited to, insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid assessments which become due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

The Purchaser, Donee or other transferee of a Unit, by deed or other writing (herein called "Grantee"), shall be jointly and severally liable with the transferor of such Unit (herein called "Grantor") for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from Grantor the amounts paid by the Grantee. The Grantee at its expense shall be entitled to a statement from the Board of Directors, setting forth the amount of the current monthly assessment and the date such assessment becomes due, as well as any credit for advanced payments or for prepaid items, including, but not limited to, insurance premiums. This statement shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten (10) days of such request, such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the subject Condominium Unit accruing prior to such ten (10)-day period.

5.11 OBLIGATION OF DECLARANT FOR ASSESSMENTS AND MAINTENANCE. During the Declarant Control period, as provided in Paragraph 4.2 hereof, the Declarant shall be responsible for the difference between the cost of maintenance and assessments received from the Unit Owners of each Building until all Units in said Building have been completed, as defined herein, or until the estimated operating expenses are accurately determined, or until Declarant transfers

any additional funds necessary to pay actual cash outlays required to fund current operating expenses of the Association. Declarant shall not be obligated to fund any reserve accounts until after the Declarant Control Period is terminated. After the Declarant Control Period is terminated, Declarant shall pay the regular monthly assessment for each Unit or Units it owns. In no event shall Declarant's liability for assessments be less than required by the Act.

ARTICLE VI

DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS

6.1 DESTRUCTION OR OBSOLESCENCE.

a. This Declaration hereby makes mandatory the irrevocable appointment of an Attorney In Fact to deal with the Property upon its destruction, obsolescence or condemnation. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any Grantee of a deed from the Declarant or from any Owner shall constitute appointment of the Attorney In Fact herein provided. All of the Owners irrevocably constitute and appoint BAYNEBRIDGE CONDOMINIUMS, INC., or its successor non-profit corporation, if same be hereafter organized, their true and lawful Attorney in their name, place and stead, for the purpose of dealing with the Property upon its destruction, obsolescence or condemnation, as hereinafter provided. As Attorney In Fact, the Association, by its authorized officers shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Condominium Unit Owner which is necessary and appropriate to exercise the powers herein granted.

b. Repair and reconstruction of the improvement(s), as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in existence prior to the damage, with

(1) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as Attorney In Fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

(2) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-seven percent (67%) of all the Common elements, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as Attorney In Fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Such deficiency assessment shall be a special assessment made pro rata according to each Owner's proportionate interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be the debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article V hereof. The lien provided for herein shall be subordinate to any prior recorded first mortgage lien, as provided in Paragraph 5.9 of this Declaration. Should the Association choose to foreclose said lien, as provided in Article V, the proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as Attorney In Fact, in the following order:

(a) For payment of taxes and special assessment liens in favor of any governmental assessing entity;

(b) For payment of the balance of the lien of any first

(e) The balance remaining, if any, shall be paid to the Condominium Unit Owner.

(3) If more than sixty-seven percent (67%) of all of the Common Elements, not including land, are destroyed or damaged, and if the Owners representing the aggregate ownership of one hundred percent (100%) of the Common Elements, do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, the entire remaining Premises shall be sold by the Association, as Attorney In Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into twelve (12) separate accounts, each such account representing one (1) of the Condominium Units in the total Project. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney In Fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any one (1) account to another, toward the full payment of the lien of any first mortgage against the Condominium Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire Property. Such apportionment shall be based upon each Condominium Unit Owner's proportionate interest in the Common Elements. The total funds of

(4) If the Owners representing a total ownership interest of one hundred percent (100%) of the Common Elements adopt a plan for reconstruction, then all of the Owners shall be bound by the terms and provisions of such plan. Any assessment made in connection with such plan shall be a Common Expense and made pro rata according to each Owner's proportionate interest in the Common Elements and shall be due and payable as provided by the terms of the plan. The Association shall have the authority to cause the repair and restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Paragraph 5.8 hereof, but will be subordinate to any prior recorded first mortgage lien, as provided in Paragraph 5.9 hereof. Should the Association foreclose said assessment lien, as provided in said Paragraph 5.8, the proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as Attorney In Fact, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

(5) The Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements or more, may agree that the Common Elements of the Property are obsolete and that the same should be renewed or reconstructed. In such instance, the expenses thereof shall be payable by all of the Owners as Common Expenses.

(6) Any restoration, reconstruction or repair of the Project shall be performed substantially in accordance with this Declaration and the original Plans and specifications, unless other action is approved by all holders of mortgages on affected Units.

and upon the recording of such notice by the Association's authorized officers, the entire Premises shall be sold by the Association, as Attorney In Fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The sales proceeds shall be apportioned between the Owners and First Mortgagees as their interests may appear on the basis of each Owner's percentage or fraction of interest in the Common Elements, and such apportioned proceeds shall be paid into twelve (12) separate accounts, each such account representing one (1) Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney In Fact, shall use and disburse the total amount of each of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

6.2 JUDICIAL PARTITION. There shall be no judicial partition of the Common Elements, nor shall Declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph 6.1 hereof in the case of damage or destruction or unless the Property has been removed from the provisions of the Texas Condominium Act; provided, however, that if any Condominium Unit 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 between such co-tenants, but such partition shall not affect any other Condominium Unit.

6.3 CONDEMNATION.

a. If all or any part of the Property is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary) the Association, as Attorney In Fact,

Association shall be borne by the Common Fund. The Association, as Attorney In Fact, is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association, as Attorney In Fact, and such damages or awards shall be applied as provided herein. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or part from any Condominium Unit), the Association, as Attorney In Fact, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such Property to the condemning authority in lieu of such condemnation proceeding.

b. With respect to any such taking, all damages and awards shall be determined for the taking of the individual Units and for the taking of the Common Elements and for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the account of each Owner for the loss of the individual Unit plus an amount in proportion to his percentage or fractional ownership interest in the Common Elements to be applied or paid as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof, unless restoration takes place as herein provided. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the holders of at least sixty-seven percent (67%) of the ownership interests in the condominiums shall decide whether to replace or restore, as far as possible, the Common Elements so taken or damaged. In the event it is determined by an affirmative vote of at least sixty-seven percent (67%) of the ownership interest in the condominiums that such Common Elements should be replaced

and the owners' first lien mortgagees. In the event that such eminent domain proceeding results in the taking of or damage to one (1) or more, but less than sixty-seven percent (67%) of the total number of Condominium Units, then the damages and awards for such taking shall be determined for each Condominium Unit and the following shall apply:

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

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

(3) In the event that the Association determines that it is not reasonably practicable to operate the undamaged Condominium Units and the damaged Units which can be made tenantable, then the Condominium Project shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interest by all Owners, as tenants in common, in the proportionate ownership interest previously owned by each Owner in the Common Elements. Any decision to terminate the condominium status of the Project must have the approval of all First Mortgagees holding the mortgages on Units.

(4) In the event that the Association determines it will be reasonably practicable to operate the undamaged Condominium Units and the damaged Units which can be made tenantable as a Condominium Unit, 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 to reconstruct such Condominium Unit so that it

ARTICLE VII

PROTECTION OF MORTGAGEE

7.1 NOTICE TO ASSOCIATION. An Owner who mortgages his Unit shall notify the Association, giving the name and address of his Mortgagee. Each Mortgagee shall be permitted to notify the Association of the fact that such Mortgagee holds a deed of trust or mortgage on a Condominium Unit. The Board shall maintain such information in a book entitled "Mortgagees of Condominium Units".

7.2 NOTICE OF DEFAULT; LAPSE IN INSURANCE. The Association shall notify a First Mortgagee in writing, upon written request of such Mortgagee identifying the name and address of the Mortgagee and the unit number, of any default by the Mortgagor in the performance of such Mortgagor's obligations, as set forth in this Declaration, which is not cured within sixty (60) days. The Association, upon written request, shall notify a First Mortgagee of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

7.3 EXAMINATION OF BOOKS. The Association shall permit First Mortgagees to examine the books and records of the Association upon request.

7.4 RESERVE FUND. The Association shall establish adequate reserve funds for replacement of Common Element components and fund the same by regular monthly payments rather than by extraordinary special assessments. In addition, there shall be established a working capital fund for the initial operation of the Condominium Project equal to at least two (2) months' estimated Common Assessments charge for each Unit, said deposit to be collected at closing of Unit sale.

7.5 ANNUAL AUDITS. If requested, the Association shall furnish each First Mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.

7.7 NOTICE OF DAMAGE OR DESTRUCTION. The Association shall furnish the First Mortgagees timely written notice of any substantial damage or destruction of any Unit on which the First Mortgagee holds the mortgage if such loss exceeds One Thousand Dollars (\$1,000.00) and of any part of the Common Elements if such loss exceeds Ten Thousand Dollars (\$10,000.00).

7.8 MANAGEMENT AGREEMENTS. Any management agreement and/or service contract entered into by the Association will be terminable by the Association without cause and without payment of a termination fee upon sixty (60) days' written notice, and the term of such management agreement will not exceed the period of three (3) years, renewable by agreement of the parties to such agreement for successive one (1)-year periods. In the event of the termination of the management agreement, as provided herein, the Association shall enter into a new management agreement with a new management agent prior to the effective date of the termination of old management agreement. Any decision to establish self-management by the Owners Association shall require the prior consent of Owners of Units to which at least sixty-seven percent (67%) of the votes are allocated and the approval of first mortgage holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of the Association.

7.9 TAXES, ASSESSMENTS AND CHARGES. All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Condominium Units and not to the Condominium Project as a whole.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 AMENDMENTS TO DECLARATION; APPROVAL OF OWNERS AND MORTGAGEES.

a. The consent of the Owners of Units representing at least sixty-seven percent (67%) of the ownership interests shall be required to add or amend any material provisions to this Declaration or to the By-Laws.

(3) Reserves for maintenance, repair and replacement of the Common Elements;

(4) Insurance or fidelity bonds;

(5) Rights to use of the Common Areas:

(6) Responsibility for maintenance and repair of the Units and Common Elements;

(7) Expansion of the Project;

(8) Boundaries of any Unit, except as provided in Paragraph 2.10 herein;

(9) Convertibility of Units into Common Elements, or Common Elements into Units;

(10) Leasing of Units;

(11) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;

(12) A decision by the Association to establish self management when professional management had been required previously by an eligible mortgage holder;

(13) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents.

(14) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or

(15) Any provisions which are for the express benefit of first mortgage holders, insurers, or guarantors of first mortgages; PROVIDED FURTHER, HOWEVER, notwithstanding any provision contained in the Declaration to the contrary, any amendment of the Declaration may not alter or destroy a Unit or a limited common element without the consent of the owners affected and the owners' first lien mortgagees.

(1) partition or subdivide any Unit. In addition to the approval of the Owner, the approval of any mortgage holder, if any, must be obtained;

(2) by act or omission, seek to abandon, partition, subdivide, encumber, or transfer the Common Elements, other than the granting of easements for public utilities or other public uses;

(3) use hazard insurance proceeds for losses to any condominium property for other than the repair, replacement or reconstruction of such property, except as provided by statute in the case of substantial loss, and as provided in Paragraph 6.1b(3). PROVIDED FURTHER, HOWEVER, notwithstanding any provision contained in the Declaration to the contrary, any amendment of the Declaration may not alter or destroy a Unit or a limited common element without the consent of the owners affected and the owners' first lien mortgagees.

c. The consent of Owners of Units to which at least one hundred percent (100%) of the votes of the Association are allocated and the approval of First Mortgagees holding mortgages on Units shall be required to terminate or abandon the condominium status of the Project by act or omission, except for a termination due to destruction or condemnation.

d. Any amendment which would change the percentage or fraction of interest of the Unit Owners in the Common Elements, will require the consent of Owners of sixty-seven percent (67%) of the votes allocated in the Association and the approval of all First Mortgagees holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages, provided that the change of percentage or fraction of ownership must have the approval of each Unit Owner affected by said amendment and each First Mortgagee holding a first lien mortgage on affected Units.

e. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration of Covenants, Conditions and Restrictions shall have the right to be heard at a meeting of the Association to discuss the request.