DECLARATION

OF

BENT TREE CONDOMINUMS

San Marcos, Hays County, Texas

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1. ARTICLE I <u>Dedication of Regime</u>

   1.1. <u>Declaration</u>. THIS DECLARATION ("Declaration"), made on the date hereinafter set forth, by SYNEY EUGENE RUTLEDGE and RALPH JUDE RAMIREZ ("Declarant", is made with reference to the following facts:

      1.1.1. <u>Description of Property</u>. Declarant is the owner of certain real property situated in the City of San Marcos, Hays County, Texas, more particularly described as all of Lot No. Eighty-Seven (87) and parts of Lots Nos. Eighty-Four (84) and Eighty-Five (85), PARK ADDITION, THIRD DIVISION, a Subdivision situated in Hays County, Texas, according to the map or plat of said Subdivision of record in Volume 56, Page 47, of the Plat Records of Hays County, Texas, and being more particularly describe by metes and bounds in Exhibit "A" attached hereto and hereby expressly incorporated herein by reference, being hereinafter sometimes referred to as the "Property".

      1.1.2. <u>Project</u>. The Property presently consists of the above described land, four (4) residential buildings containing a total of twenty (20) residential units or apartments, some of which may or may not have been completed, together with other improvements now or hereafter erected thereon, facilities and appurtenances thereto, and all property, real, personal, or mixed, intended for use or used in connection with the Property, being hereinafter sometimes referred to as the "Project" or the "Condominium".

      1.1.3. <u>Condominium Regime Intended</u>. Declarant desires to establish a Condominium Regime under the Texas Condominium Act. Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the Unit plus an undivided interest as a tenant-in-common in the Common Elements. Each unit shall have appurtenant to it a membership in BENT TREE CONDOMINUMS HOMEOWNERS' ASSOCIATION, INC.

      1.1.4. <u>Restrictions to be Imposed</u>. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvements for the benefit of all of said Units and the Owners thereof.

   1.2. <u>Condominium Regime</u>. Declarant does hereby establish BENT TREE CONDOMINIUMS as a Condominium Regime under the Texas condominium Act and hereby declares that the

Condominiums shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project and every part thereof. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be perpetually binding upon the Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

2. ARTICLE II <u>Definitions</u>
   2.1. "<u>Texas Condominium Act</u>" or "<u>Act</u>" shall mean Article 1301a of the Texas Revised Civil Statues, enacted in 1963, which permits the creation of condominium regimes, as same is amended or supplemented in any successor statute, including, without limitations, any amendment or statute enacted in the future.
   2.2. "<u>Declarant</u>" shall mean and refer to SYDNEY EUGENE RUTLEDGE and RALPH JUDE RAMIREZ and their successors-in-interest and assigns, provided such successors or assigns are designated in writing by Declarant as a successor or assignee of the rights of Declarant hereunder.
   2.3. "<u>Declaration</u>" shall mean and refer to this enabling Declaration.
   2.4. "<u>Building</u>" shall mean each of the structures presently and hereafter erected on the property containing two or more units.
   2.5. "<u>Condominium</u>" or "<u>Unit</u>" shall mean one individual unit, together with an undivided interest in the Common Elements. The term "Condominium" or "Unit" shall have the same meaning as the term "apartment" as used in the Texas Condominium Act.
   2.6. "<u>Owner</u>", "<u>Owners</u>" or "<u>Unit Owner</u>" shall mean and refer to the record holder or holders of fee simple title to a Unit in the Project, but shall exclude Persons having any interest in a Unit merely as security for the performance of any obligation.
   2.7. "<u>Person</u>" means a natural person, a corporation, a partnership, a trustee, or other legal entity.
   2.8. "<u>Common Elements</u>" shall mean and refer to both the General and Limited Common Elements described herein.
   2.9. "<u>General Common Elements</u>" shall mean and include:
      2.9.1. The property is a Condominium Regime more particularly described above.
      2.9.2. To the extent not otherwise designated as Limited Common Elements, the foundations, common dividing walls between two or more Units or between Units and Common Elements, exterior walls, bearing walls and columns (including any windows, doors, and chimneys therein), girders, beams, slabs, supports, roofs, attics, ceilings and floors, halls, lobbies, or thoroughfares such as stairways, entrances, exits or communication ways and any other portion of any building now or hereafter located on the Property;
      2.9.3. To the extent not otherwise designated as Limited Common Elements, the grounds, yards, gardens, driveways, parking spaces, storage areas, fences, walks, service easements, common recreational facilities, facilities otherwise utilized in common, and areas used for storage of maintenance and janitorial equipment and materials, if any now or hereafter located on the property;

2.9.4. The installation consisting of the equipment and materials making up central services such as power, electricity, gas, water, sewer, television, hot water, machinery and equipment related thereto, and the likes which are intended to serve more than one unit;

2.9.5. All other structures, facilities, equipment, property located on the Project necessary or convenient to its existence, maintenance, operations and safety, or normally in common use;

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

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

2.10. "Limited Common Elements" shall mean those Common Elements reserved for the use of a specified Unit or Units to the exclusion of others, or serving exclusively one or more specified Units, the enjoyment benefit or use of which is reserved to the lawful occupant of said Unit or Units either in this Declaration, or as designated on the Map attached hereto, as the same may be amended from time to time, including by the way of example, but not limited to:

2.10.1. Any parking space, storage area, entryway or stairway assigned to a Unit, if any is, when so indicated on the Map or when so specified in this Declaration. The depiction on the Map or any such space, area or way and the reference thereof to the number of a Unit shall be one of the methods of showing that such has been assigned as a Limited Common Element to the Unit bearing that number.

2.10.2. The utilities, sewers, power, water, gas, electricity and other common lines running through the walls, ceilings or floors of each Unit and use only to service such Unit;

2.10.3. Such portions of the perimeter walls, floors, ceilings, doors, windows, and all associated fixtures and structures therein, as lie outside the Unit boundaries but that serve only such Unit.

2.11. "Map" or "Condominium Plan" shall mean and refer to the Map being filed herewith and Exhibit "B" and hereby incorporated herein by reference, as the same may be amended from time to time as herein provided. The Map sets forth, among other things, a survey of the Property showing the location of each Building and proposed Building designated by letter, a general description and plat of each Unit showing its square footage, Building location, floor and Unit number, and a general description of the Common Elements. The Map substantially depicts the location of each Building, the Units, the Unit numbers, the dimensions of the Units, the Building designation by letter, both with respect to any existing and to any proposed Building an Units. In interpreting the Map, the physical boundaries of each Unit and each Building, both those presently existing and those proposed to be constructed in the future, shall be conclusively presumed to be the boundaries thereof, unless the Map is amended o show more accurate location of any such.

2.12. "Association" shall mean and refer to BENT TREE CONCOMINIUMS HOMEOWNERS' ASSOCIATION, INC., its successors and assigns, a Non-Profit Corporation organized pursuant to the Texas Non- Profit Corporation Act, of which the Owners shall be Members. The term "Association" shall have the same meaning as the term "Council of Co-Owners' in the Texas Condominium Act.

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

2.14. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

2.15. "By-Laws" shall mean and refer to the By-Laws of the Association, as amended from time to time.

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

2.17. "Project Documents" mean and include this Declaration and any exhibit attached hereto, the Articles and By-Laws of the Association and Rules and Regulations for the Members, as the same may be established or amended from time to time.

2.18. "Common Interest" means the undivided interest in the Common Elements which is appurtenant to each Unit as set forth in Exhibit "C" attached to this Declaration.

2.19. "Common Expenses" means and includes:

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

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

2.19.3. Expenses agreed upon a common Expenses by the Owners; and

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

2.20. "Assessment" shall men the assessment made and levied against each Owner and his Unit for that portion of the Common Expenses and other charges which is to be paid by each Unit Owner as determined by the Association in accordance with this Declaration and the By-Laws. "Assessment" shall also mean any "special assessment" and any other assessment levied pursuant to the provisions of any Article contained in this Declaration.

2.21. "Institutional Lender" shall mean the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), The Veterans Administration ("VA"), and any other similar governmental or quasi-governmental agency, any bank, savings and loan association, any credit union, any insurance company, any mortgage company, or any other similar financial institution holding a recorded Mortgage or Deed of Trust on any Unit.

2.22. "Mortgage" or "Deed of Trust" shall mean a lien interest against a Unit given to or held by an Institutional Lender as security for repayment of a loan or other extension of credit made to the Unit Owner, said interest to be evidenced by a instrument duly and properly recorded in the Deed of Trust or Real Estate Records of the County in which the Project is situated.

2.23. "Mortgagee" shall mean an Institutional Lender which is the beneficiary of a holder of, or which has any interest in, any first lien Deed of Trust or Mortgage; i.e., a Deed of Trust or Mortgage which is superior in priority to all other contractual liens.

3. ARTICLE III Divisions of Property and Creation of Property Rights

3.1. Division of Project. The Project is hereby divided into the following freehold estates and areas: On the Map attached hereto the Buildings in the Project are lettered A through D, and the Units Located therein are numbered as shown on the Map.

3.1.1. Units. In determining dimensions of, and area contained within each Unit, the enclosed space within a Unit shall be measured from the interior finished, unpainted surfaces of the perimeter walls, floors, and ceilings, and the Unit shall include the airspace so encompassed. Included in each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the common exterior walls or interior walls, floors, ceilings or other interior surfaces (such as, but without limitations, paint, wallpaper, vinyl wall or floor covering, carpet, tile, lavatories, commodes, sinks, built-in ranges and ovens, and cabinets.) The boundaries of each Unit shall be the interior surface of the perimeter walls, floors, ceilings, windows and doors and the exterior surfaces of any appurtenant balconies and terraces. Interior trim around the windows and doors shall be a part of each Unit and shall not be a part of the Common Elements. The Unit does not include "Common Elements" defined herein. It is expressly stipulated, and each and every purchaser of a Unit, his heirs, executors, administrators, successors and assigns, hereby agree that the square footage, size and dimensions of each Unit, as set out and shown in this Declaration or on the Condominium Plan are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimension shown by the Condominium Plan thereof. Each purchaser and Owner of a Unit, or interest therein, has had a full opportunity and is under a duty to inspect and examine the Unit purchased by him prior to the purchase there of, and agrees that the Unit is purchased as actually and physically existing. Each purchaser of a Unit hereby expressly waives any claim or demand which he may have against the Declarant or other seller of such Unit on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the Condominium Plan. Each Unit is subject o such encroachment and protrusions as are contained in each Building, whether the same now exist or may be later caused or created in any existing physical boundaries of a Unit, whether in its original state thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling, rising or lateral movement of any Building and regardless of minor variance between boundaries shown on the Condominium Plan or deed, and those of any Building.

3.1.2. Common Elements. The remaining portion of the Property is comprised of Common Elements. Each Unit Owner shall have, as an appurtenance to his Unit and undivided interest in the Common Elements as shown in Exhibit "C" attached hereto and hereby expressly incorporated herein by reference. The ownership of any interest in the Regime shall include a Unit and such undivided interest in the Common Elements. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered once said by Declarant without the consent of all the Owners of said Units and the Mortgagees of such Owners as expressed in the amended Declaration. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner shall have a non-exclusive right to use the General Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners.

3.1.3. <u>Limited Common Elements</u>. The Limited Common Elements shall be identified herein or on the Map, as amended from time to time, and designated a appurtenant to a particular Unit or Units. The rights of an individual Owner in the Limited Common Elements shall consist of an exclusive easement to use a space or spaces or an area or areas, if any, specifically assigned herein, or assigned or reassigned by Declarant or the Association, to the Owner as being appurtenant to his Unit, provided, however, that such easement shall be shares with any other Unit to which any such space or area is also appurtenant.

3.2. <u>No Separate Conveyance of Undivided Interest</u>. The Common Interests are to be conveyed only with the respective Units, and cannot be changed, except as herein set forth. Declarant and each Owner covenant and agree that the undivided interests in the Common Elements and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

3.3. <u>Partition Prohibited</u>. The Common Elements shall remain undivided so long as suitable for a condominium regime. Except as provided by the Texas Condominium Act, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owner by two or more persons and division of the sale proceeds is not prohibited hereby (but partition of title to a single Unit is prohibited).

4. ARTICLE IV <u>Association, Administration, Membership and Voting Rights</u>

4.1. <u>Association to Manage Common Elements</u>. The management of the Common Elements shall be vested in the Association in accordance with the terms of this Declaration and the By-Laws. The By-Laws have been duly adopted by the Board of Directors of the Association; and all Owners of the Units and all holders of liens thereon shall be bound thereby. The Owners of all the Units covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles and the By-Laws, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of ay governmental or quasi-governmental body or agency having jurisdiction over the Project or the Association, as such may be amended from time to time.

4.2. <u>Membership</u>. Any Person, upon becoming the Owner of a Unit, shall automatically be a Member of the Association, and shall remain a Member thereof in accordance with the Articles and the By-Laws until such time as his ownership of said Unit ceases for any reason, at which time his membership in the Association shall automatically cease.

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

4.4. Voting Rights. The Owner of Owners of each Unit shall be entitled to one (1) vote, the value of which shall equal the Common Interest assigned to said Owner's or Owners' Unit as provided in this Declaration.

4.5. Board of Directors. The affairs of the Association shall be managed by a Board of Directors which has been established and which shall conduct regular and special meetings according to the provisions of the By-Laws.

4.6. First Annual Meeting. Notwithstanding any other provision to the contrary contained in this Declaration , the Articles of Incorporation of the Association or the By-Laws, the First Annual Meeting of the Association shall be convened by the Declarant or the Board upon the earlier of the following events to occur: by not later than one hundred twenty (120) days after the conveyance by Declarant of Units whose Owners, in the aggregate, hold at least seventy-five percent (75.0%) of the undivided interests in the Common Elements or by not later than three (3) years following the date of the conveyance by Declarant of the first Unit in the Project. At such Meeting, the Unit Owners holding at least fifty-one percent (51.0%) of the undivided interests in the Common Elements shall have the right to elect the Board, including any Board appointed in whole or in part by Declarant.

4.7. Owners' Rights to Access to Records. Each Unit Owner, upon request, shall have the right to require the Association to make available to such Owner, for inspection during normal business hours or under other reasonable circumstances, any then current versions of this Declaration, the By-Laws and any Rules and Regulations concerning the project and the books, records and financial statements of the Association.

5. ARTICLE V Maintenance and Assessment

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

5.2. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project for the improvements and maintenance of the Common Elements for the common good of the Project. The Board may use said Assessments for said purposes, including, without limitations, providing for the enforcement of the provisions of this Declaration, the By-Laws and the Rules and Regulations promulgated there under. The decision of the Board with respect thereto shall be final so long as made in good faith. Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Elements. The Limited Common Elements shall be maintained as General Common Elements, and Owners having exclusive use thereof shall not be subject to any special charges or Assessments for the repair or maintenance thereof except as otherwise provided in the By-laws or herein.

5.3. Regular Assessments. The Declarant shall establish the budget for the initial year of the operation of the Project, which budget, although subject to amendment, shall remain in full force and effect for one year following the date on which the first installment of the Regular Assessment becomes due and payable. The Board shall also adopt a budget for such initial year and may do so by ratifying, confirming or adopting the budget therefor established by Declarant. The Board shall adopt such a budget annually, the first such to be effective during such initial year of the operations and each subsequent annual budget to be effective upon the expiration of each immediately preceding annual budget. The period of time covered by an annual budget shall be called herein a "Budget Year." The budget established for such Budget Year shall include, at least, a good faith estimate of the Common Expenses to be paid during such Budget Year, including, without limitation, a good faith estimate of reasonable amount as a reserve for the periodic maintenance, repair and replacement of the Common Elements. Each such budget may also include a good faith estimate of the costs of providing utility services to the Units, such as water and television, when furnished by or through the Association. An Assessment shall be levied for each Budget Year against each Unit and the Owner thereof for each Unit's proportionate shares of the Common Expenses and other charges as shown in each annual budget. Such Assessments, known herein as the "Regular Assessments," shall be apportioned among the Units in proportion to the Common Interest appurtenant to the respective Units; but each Unit's Assessment shall be paid by the Owner thereof in equal monthly installments, unless the Regular Assessment is increased or decreased, in either of which events the increase or reduction shall be paid or absorbed by each Unit in equal monthly shares during the period of time affected by such increase or reduction. The Board may increase or decrease the Regular Assessments at any time; but an increase thereof exceeding twenty percent (20%) of the Regular Assessments scheduled to be paid by all Units during the balance of the Budget Year including all installments thereof scheduled to be paid during the month in which such increase is to be effective, shall require the consent or approval of the Owners of Units to which at least seventy-five percent (75.0%) of the Common Interests are appurtenant.

5.4. Special Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any Budget Year, one or more Special Assessments applicable to that Year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the Common Elements, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expense or other action or undertaking normally covered by Regular Assessments (and, where necessary, for taxes assessed against the Common Elements, the Association or the project as a whole), or to defray the costs not covered by insurance proceeds of any reconstruction, repair or replacement of any part of the Project, or to defray the costs not covered by an award in condemnation of the reconstruction, repair or replacement of any part of the Project. Except as provided elsewhere in this Declaration to the contrary, such Special Assessments shall be levied against each Unit and the Owner thereof in proportion to the Common Interest appurtenant to such Unit; Special Assessments may also be levied against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration or the By-Laws, including actual attorney's fees and costs. Said Special Assessments may be subject to such limitations as are provided herein or in the By-Laws. "Special Assessments,"; as those words used herein, shall include Assessments levied pursuant to any other provisions below of this or any other Article contained in this Declaration.

5.5. <u>Special Assessments for Utilities</u>. If the Association provides or furnishes or arranges in any way for any utility service, such as water and television signals, to be delivered to any Unit, then the costs of such service (including without limitation a reasonable amount to cover the expenses of the Association for making any such service available and for collecting the costs thereof) may be allocated in any reasonable manner among the Units benefitting from any such service, whether by way of metering, estimating, proportioning or otherwise. The amount thereof allocated to a Unit shall be a special Assessment levied against such Unit and its Owner and may be collected monthly or at such other intervals as the Board may direct. In the event that a Special Assessment for utilities is not paid when due and is not paid thereafter within a period of time to be determined by the Board and applied consistently to all Units, then the Board, after giving prior written notice to the Owner of such Unit, providing an additional period of grace to be applied consistently to all Units also, may terminate such service or services to such Unit until all arrearages, interest thereon, attorney's fees, additional costs of collection the expense of restoring such service or services an all other related costs have been paid to the Association.

5.6. <u>Levy of Assessments</u>. All Assessments, Regular and Special may be levied against any unit and the Owner thereof in any way consistent with the notion that the Owner will receive fair notice thereof. The Board may treat all Owners equally, however, and need not distinguish between the circumstances that differentiate one Owner from another; thus, notice of an Assessment given in a manner calculated to come to the attention of a reasonable Owner who is a resident of a Unit will be sufficient if followed for the purpose of giving like notices to all Owners. Furthermore, the Assessment for Common Expenses shall be deemed to have been levied against each Unit and the Owner thereof whether any notice of such is given or not; and Assessments can be levied against Unit and Owners retroactively when considered appropriate by the Board. Moreover, without limiting the generality of the foregoing, the Board is authorized to provide a written notice of the annual Regular Assessment to a the Owner of a Unit, which will be a sufficient levy hereunder; and the notice of the amount of any Assessment contained in any writing (even if the Association is not a party thereto) is a sufficient levy thereof. Actual or constructive notice will be a sufficient levy; and each prospective purchaser of any Unit shall have a duty to inquire about all Assessment before acquiring any interest in a Unit and shall be deemed to have actual knowledge of all such whether or not a formal levy has been perfected. In any event, notice of any Assessment given by certified mail, return receipt requested, to any Owner addressed to such Owner's Unit shall be a sufficient levy when place in a post office or official depository under the control and supervision of the United States Postal Service, its successors or assigns.

5.7. Assessment Lien. All sums levied but unpaid for Assessments chargeable to any Unit or to any Owner, including interest thereon at the rate of eighteen percent (18.0%) per annum from the date any such Assessment is due until paid, shall be secured by a lien of such Unit superior to all the other liens and encumbrances, except as provided below. Without limiting the generality of the foregoing, the Declarant also hereby reserves and assigns to the Association, without recourse, a vendor's lien against each Unit to secure the payment of any Regular or Special Assessment which may be levied pursuant to the terms hereof, and the expenses incurred in connection with the enforcement thereof, including, without limitation, interest at the rate provided above, costs and reasonable attorney's fees.

5.8. Recordation of Assessment Lien. The Board of Directors or a managing agent appointed by the Board ("Managing Agent") may (but shall not be required to) prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed by one of the members of the Board of Directors or by one of the officers of the Association or by a representative of the Managing Agent and may be recorded in the office of the County Clerk of the County in which the Project is located.

5.9. Enforcement of Assessment Lien. Such lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association in like manner as a mortgage on real property subsequent to the recording of a notice provided for above. In any such proceeding, the Owner agrees to pay the costs, expenses and attorney's fees incurred in connection with any such foreclosure proceeding. The Owner of the Unit being foreclosed shall be required to pay to the Association the Regular Assessments for the Unit during the period of foreclosure, and the Association shall be entitled to the appointment of receiver to collect the same. The Association shall have the power to bid on the Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any Mortgagee holding a lien on any Unit may pay but shall not be required to pay, any unpaid Assessments owing with respect to such Unit, but such payment shall not be deemed a waiver of the Owner's default by either the Association or such Mortgagee. Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil Statutes, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also temporarily suspend the Association membership rights of any Owner who is in default in payment of any Assessment in accordance with the By-Laws.

5.10. Priority of Lien. Each Assessment Lien shall be and is subordinate and inferior only to the following: (i) assessments, liens, and charges in favor of the State of Texas and any political subdivision thereof for taxes past due and unpaid on such Unit; and (ii) amounts due under any Mortgage or Deed of Trust held by any Mortgagee, or in which any Mortgagee may have an interest, duly recorded prior to the recordation of any lien assessment as provided above. A Mortgagee or Deed of Trust evidencing the renewal or extension of an indebtedness already secured in its payment by a Mortgage or Deed of Trust against a Unit, even though the former is recorded after the written notice or statement reflecting a delinquent Assessment or Assessments prepared in accordance with provisions above shall remain superior to the Liens securing the payment of any such Assessment.

5.11. Payment Dates of Assessments. The first monthly installments of Regular Assessment shall commence as to all Units on the first day of the month next following the conveyance by deed of the first Unit in the Project, and each subsequent monthly installment of each Regular Assessment shall become due and payable on the first day of each successive calendar month thereafter. Each Special Assessment shall be due and payable on the date specified by the Association in the notice thereof given to each Owner; provided, however, that the due date of a Special Assessment (other than a Special Assessment for utilities) may not be sooner than thirty (30) days following the date of such notice.

5.12. Transfer of Unit by Sale or Foreclosure. Sale or transfer of any Unit shall not affect the Assessment lien. However, the sale or transfer of a Unit pursuant to foreclosure by a Mortgagee, or by deed or other transfer in lieu thereof, shall extinguish the lien of such Assessments as to payment which becomes due prior to such sale or transfer (except for Assessments reflected by the written Assessment lien prepared in accordance with the above provisions and duly recorded prior to the recordation of a Mortgage or Deed of Trust held by a Mortgagee or in which any Mortgagee may be an Interest). No such sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof. When any Mortgagee of a Mortgage obtains title to a Unit as a result of foreclosure of such Mortgage, or by deed or other conveyance in lieu thereof, such Mortgagee shall not be liable for unpaid dues or charges of the Association chargeable to such Unit which accrued subsequent to the recordation of such Mortgage and prior to the acquisition of title to such Unit by such Mortgagee. Such unpaid dues or charges shall be deemed to be a Common Expenses collectible from all of the Units including the Unit acquired by such Mortgagee. In a voluntary conveyance of a Unit (other than a deed or conveyance to a Mortgagee in lieu of foreclosure), the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments levied by the Association against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee, upon payment to the Association of a reasonable fee not to exceed Twenty-Five and No/100 Dollars ($25.00) and upon written request, shall be entitled to a statement from the Association, setting forth the amount of any unpaid Assessments then due and owing to the Association with respect to the Unit being purchased, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments levied by the Association against the grantor in excess of the amount set forth in the statement and applicable to a period of time prior to the date of such statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of such statement.

6. ARTICLE VI Duties and Powers of the Association

6.1. Duties and Powers. In addition to the duties and powers enumerated in the By-Laws and the Articles, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

6.1.1. General Responsibilities. Maintain, repair, replace, restore, operate and manage all of the Common Elements and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association in good condition. This obligation shall not extend to any portion or facility of the Common Elements required to be maintained by an individual Owner under this Declaration or the By-Laws;

6.1.2. Enforcement. Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditures of funds of the Association, the employment of legal counsel and the commencement and prosecution of action.

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

6.1.4. Easements. Grant and reserve easements where necessary or desirable for ingress and egress, for drainage and encroachment, and for utilities and utility facilities over the Common Elements and Units to serve the Common Elements and the Units and amend the Map to show the same;

6.1.5. Professional Management. Have the authority (and the obligation if required by a Mortgagee) to employ a manager or other persons and to contract with independent contractors or managing agents, for a term not exceeding (3) years, to perform all or part of the duties and responsibilities of the Association, subject to the By-Laws an restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over or interest in the Project, specifically including, but not limited to, any Mortgagee, it being agreed and understood that any agreement with any such agent or other person shall provide that the same may be terminated by any party thereto without cause and without payment of a termination fee if the terminating party gives all other parties written notice of such termination not more than ninety (90) days prior to the effective date thereof. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not terminate professional management of the Project and assume self-management thereof without the prior written consent of Unit Owners holding at least sixty-seven percent (67.0%) of the Common Interests and the Mortgagees holding liens against Units to which at least fifty-one percent (51.0%) of the Common Interest are appurtenant;

6.1.6. Record Keeping and Audit. Keep or cause to be kept records with detailed accounts of the income, receipts and expenditures affecting the Project and its administration, specifying the maintenance and repair expenses with regard to the Common Elements and any other expenses incurred by or on behalf of the Project or Association. The records so kept shall be available for inspection by all Owners and Mortgagees of Units during regular business hours of the Association that shall be set and announced for general knowledge. All records shall be kept in accordance with generally accepted accounting principles and shall be audited at least once a year by an independent auditor. Copies of the auditor's report shall be made available to all Owners and Mortgagees upon written request and the payment of the reasonable reproduction costs of such report as established by the Board or Managing Agent within ninety (90) days following the end of any fiscal year of the Association;

6.1.7. Rules and Regulations. Adopt reasonable rules not inconsistent with this Declaration, the Articles, or the By-Laws relating to the use of the Common Elements and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Project and other owners.

6.2. Maintenance of Project by Association. The Association shall provide maintenance of the Project as provided herein or in the By-Laws.

6.3. Association Easements and Access to Units. For the purpose of performing the maintenance, repair or replacement authorized by this Article of for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have a non-exclusive easement over and onto all portions of the Common Elements, and shall also have the right, after reasonable notice to the Owner, and at reasonable hours, to enter any Unit for such purposes and to enter any Unit without notice at any time in the event of an emergency. Should any Owner change any lock on any entrance to his Unit, such Owner shall immediately provide to the Board a key to the new lock. Damage to the interior or any part of a Unit or Units resulting from the maintenance, repair, emergency repairs or replacement of any of the Common Elements or as a result of the emergency repairs within the another Unit at the instance of the Association shall be a Common Expense of all of the Owners; provided, however, that if such damage is the result of the neglect, misuse or negligence of an owner, then such Owner shall be and liable for all such damage. All damage improvements shall be restored to substantially the same condition of such improvements prior to damage. All maintenance, repairs and replacements as to the General Common Elements, whether located under or outside of Units (unless required to be maintained by an individual Owner under this Declaration or necessitated by the neglect, negligence or misuse by an Owner or his guests, tenants or invitees, in which case such expense shall be charged to such Owner) shall be the Common Expenses of all the Owners.

7. ARTICLE VII Utilities

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

7.1.1. Payment by Owners. Each Owner shall pay for his utilities which are separately metered and billed to each Unit by the respective utility companies or submetered or estimated and billed to each Unit by the Association. Any such utility expenses billed to each Unit by the Association, if not included as part of a Regular Assessment, shall be deemed to be Special Assessment hereunder and shall be secured by lien reserved herein for the payment of Special Assessments.

7.1.2. Easements for Ingress and Egress. Whenever sanitary, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, or flues (such items being herein after collectively called the "connections") are located or installed within the Project, which connections, or any portion thereof, lie in or upon more than one Unit, Declarant reserves for use and benefit of the Association the rights and an easement to the full extent reasonably necessary therefor, to enter upon the Units or to have the utility companies enter upon the Units in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when reasonably calculated to cause minimal interference with the continued use and occupancy of the Units so affected by the Owners thereof, while still adequately serving the purposes for which they are granted;

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

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

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

8. ARTICLE VIII Use Restrictions

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

8.1.1. Use of Individual Units. No Unit shall be occupied and used except for single family residential purposes by the Owners, their tenants, and social guests, and to trade or business shall be conducted therein.

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

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

8.1.4. Signs. Declarant may place signs in or around the Common Elements and use the Common Elements for sales purposes until the last Unit in the entire Project is sold. Owners other than the Declarant however, are prohibited from placing "for sale," "for rent" or any other sings in or around the Common Elements of displaying signs to the public view on any Unit or any portion of the Project.

8.1.5. Animals. No animals or birds of any kind shall be raised, bred, or kept in any Unit, or on any portion of the Project except as permitted in the By-laws or in the Rules and Regulations adopted by the Board and published from time to time.

8.1.6. Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the project and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except insanitary containers in accordance with the By-Laws or the Rules and Regulations adopted by the Board and published from time to time. All equipment, garbage cans, woodpiles, or storage piles shall be kept screen and concealed from view of other Units, streets, and the Common Elements.

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

8.1.8. Right to Lease. The respective Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as rental for any period less than thirty (30) days, nor shall less than an entire Unit be rented or leased. Subject to the foregoing restrictions, the Owners of the respective Units shall have the absolute right to lease the Units provided that the lease is in writing, is made subject to the covenants, conditions, easements, restrictions, limitations, liens for Assessments and uses contained in this Declaration and the By-Laws, and any Rules and Regulations adopted by the Board and published from time to time. Each Owner of every Unit hereby authorizes the Board to terminate, oust or otherwise evict any Tenant occupying any Unit by reason of any violation of the covenants, conditions, easements, restrictions or limitations herein contained or of the By-Laws or any Rules and Regulations adopted by the Board and published form time to time or by reason of any default on the part of such Tenant (or the Owner of the Unit) to pay any part of any Assessment when due and payable.

8.1.9. Mortgaging a Unit-- Priority. Any Owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first Mortgage shall be one which has first and paramount priority under applicable law. An

Owner may create and grant a second lien mortgage or deed of trust against his Unit on the following conditions: (1) that any such second lien mortgage or deed of trust shall always be subordinate to all the terms, conditions, covenants, restrictions, uses. Limitations, easements, obligations and liens for Assessments created by this Declaration or by the By-Laws; and (2) that the mortgagee under any second lien mortgage or deed of trust shall release by written recordable instrument, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were effected and place upon the mortgaged premises by the Association. Such release shall be furnished to the Association by the mortgagee under any second lien mortgage or deed of trust promptly following written request therefor by the Association.

8.1.10. Power Equipment and Car maintenance. No power equipment, workshops, or car maintenance of any nature whatsoever shall be permitted on the Project except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

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

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

9. ARTICLE IX Architectural Control

9.1. Prohibitions of Alteration and Improvement. Subject to the exception of the Declarant as provided below, no building , fence, wall, obstruction, balcony, screen, patio cover, tent, awning, carport, erected, paintings maintained upon the Project, nor shall any alterations or improvement of any kind be made thereto (save and except for repainting and redecorating of the interior of a Unit by an Owner) until the same has been approved in writing by the Board or by the Architectural Control committee (the "Committee") appointed by the Board and/or Declarant as provided in this Article.

9.2. Plans and Approval. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements or alterations, shall be submitted to the Board or Committee for approval as to such matters as quality of workmanship and design and harmony of structural and external design with existing structures, and as to the location of such improvements or alterations, shall be submitted to the Board or Committee for approval as to such matters as quality of workmanship and design and harmony of structural and external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Board or Committee. No landscaping of patios or yards visible from the street, from other Units or from the Common Elements shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, design and location of the proposed materials shall have first been submitted to and approved in writing by the Board or Committee. The Board or Committee shall respond in writing within sixty (60) days from the date it receives said requests for approval of plans and specifications required under this Section 9.2 If the Board or Committee does not respond in writing within said sixty (60) day period, the Board or Committee shall be deemed to have approved said request.

9.3. Architectural Control Committee. The number, appointment and term of members of the Committee shall be as provided in the By-Laws, subject to the following limitations:

9.3.1. Number. If a Committee is appointed, there shall be not less than three (3) nor more than five (5) members of the Committee.

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

10. ARTICLE X Insurance

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

10.2. Master Hazard Insurance. Additionally, the Association shall obtain and continue in effect a master or blanket policy or multi-peril insurance on the Project, providing, as a minimum, fire and extended coverage and all other coverages in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of all improvements on the Project, including without limitations all personal property and supplies owned by the Association and all fixtures, equipment and other property within any of the Units (whether or not such constitutes any part of the Common Elements) covered by a Mortgage or Deed of Trust against any such Unit. If there is a steam boiler in operation in connection with any Unit, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing minimum coverage in an amount not less than One Hundred Thousand Dollars ($100,000.00) per accident per location. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of one hundred percent (100%) of the current replacement costs of all property so insured or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The Master policy of multi-peril insurance shall contain extended coverage and replacement costs endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause and a determinable cash adjustment clause, or a similar clause to require cash settlements unless the Association in writing approves the restoration of damage by the insurer in lieu of such cash settlement. Such policies shall be in form and amount as may be determined by the Board, shall name as insured the Association, as the trustee of the Owners and Declarant (so long as Declarant is an Owner of any Unit), and all Mortgagees as their respective interests may appear, or the duly appointed "authorized representative" of all of the foregoing, if one is so selected, including any trustee ("Insurance Trustee") of any insurance trust agreement which the Association may create, and shall provide that any proceeds be paid to the Association or other authorized representative (including any Insurance Trustee) for the use and benefit of the Owners and the Mortgagees as their interests may appear. All hazard insurance policy contracts shall provide that no contribution or assessment may be made against the Association, the Owner of any Unit, any Mortgagee, or the designee of any Mortgagee; and in no event may any contribution or assessment made against any other party become a lien on any Unit superior to the liens of a Mortgagee. All policies of hazard insurance must contain or have attached the standard Mortgagee Clause commonly accepted by private institutional mortgage investors in the County in which the Project is located.

10.3. <u>Additional Association Insurance.</u> The Association may purchase other insurance as it may deem necessary, including without limitation plate glass insurance, worker's compensation, directors liability, errors and omissions insurance, and fidelity coverage against dishonest acts by any directors, managers, trustees for handling funds belonging to or administered by the Association. Such fidelity insurance, and any other insurance coverage, shall be obtained and maintained by the Association when required by any Mortgagee.

10.4. <u>Insurance Premiums.</u> Insurance premiums shall be a Common Expense to be included in the Regular Assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the rights of any Owner to obtain additional individual insurance.

10.5. <u>Additional Requirements Regarding Insurance Coverage.</u> Insurance coverage obtained and maintained pursuant to the requirements of this Article may not be brought into contribution with insurance purchased by the Owners or by their Mortgagees. No such coverage may be prejudiced by any act or neglect of the Owners when such act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control. Each policy of property insurance carried by the Association shall be primary (and shall be so endorsed if necessary) notwithstanding any other insurance covering the same loss. All coverages shall contain Agreed Amount and Inflation Guard Endorsement, if available. No such coverage may be cancelled or substantially modified (including cancellation for non-payment of premium) unless at least ten (10) days' prior written notice is given to any and all insureds thereunder, including any and all Owners and Mortgagees beneficially insured thereunder. All policies obtained pursuant to the provisions of this Article must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts of the insured. Furthermore, all policies of insurance shall be in such form and in such amount or amounts and shall be issued by such carriers as may be required by any Mortgagee including, without limitation, FNMA, FHLMC, VA and FHA. Also, if all Mortgagees approve, the Board may obtain and maintain insurance coverage that does not comply with the stringent requirements set forth in this Article, including the power not to carry insurance coverage otherwise mandated by the provisions of this Article if waived by all Mortgagees. If at any time there are no Mortgagees, the Board is simply charged with the duty to use good judgment when deciding whether and what insurance coverage to carry.

10.6. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of the Association as the attorney-in-fact of the Owners to deal with the Project, in whole or in part, upon its destruction or repair, with full power of substitution in the premises. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead for the purpose of dealing with said Project upon its damage or destruction as is hereafter provided. As attorney-in-fact, the Association, by and through its President or any Vice President and Secretary or any Assistant Secretary, shall have full and complete authorization, rights and power to make, execute and deliver any contracts, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Any repair, reconstruction or replacement made of the improvement(s) shall be to substantially the same condition existing prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purposes of repair, restoration or replacement unless the Owners agree not to rebuild in accordance with the provisions hereinafter set forth. The Association shall have full authority, right and power, as attorney-in-fact, to cause any repair and restoration of improvement(s) permitted or required hereunder. Without limiting the generality of the foregoing, the Association, as said attorney-in-fact, shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to settle and compromise any and all claims under said insurance policies, to collect proceeds and to distribute the same to the Association, the Owners and the respective Mortgagees (subject to the provisions hereof) as their interests may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Owners, the Association and the Project as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Units or for the liability of any Owner for occurrences therein not caused by or in connection with the Association's operation, maintenance or use of the Project.

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

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

10.7.2. Insufficient Proceeds. If the insurance proceeds are insufficient to reconstruct the Project, damage to or destruction thereof shall, subject to the provisions below, be promptly cause to be repaired and restored by the Association or its duly authorized agents, using proceeds of insurance, if any, on the Project for that purpose, and the Owners shall be liable for the Special Assessment or Assessments for any deficiency as hereinafter provided.

10.7.3. Less than Two-Thirds Destruction. If less than two-thirds (2/3) of the Project (as determined by the vote or written consent of Members owning at least sixty-seven percent (67.0%) of the Common Interests in the exercise of their sole discretion) is destroyed or substantially damaged by fire or any other disaster, then the Project shall be rebuilt or repaired, unless the members of the Association by unanimous vote or written consent and unless one hundred percent (100%) of the Mortgagees by prior written approval, elect not to repair such damage.

10.7.4. Two-Thirds or More Destruction. If two-thirds (2/3) or more of the Project (as determined by the vote or written consent of one hundred percent (100%) of the Mortgagees and Members owning at least sixty-seven percent (67.0%) of the Common

Interest in the exercised of their sole discretion) is destroyed or substantially damaged by fire or any other disaster, and if the Members, by unanimous vote or written consent, do not voluntarily, within one hundred eighty (180) days after determination of the amount of the Association's insurance proceeds resulting from such destruction or damage, make provision for reconstruction, the Condominium Regime shall be deemed to have been waived, and the Association, the Owners and all Mortgagees (including all mortgagees holding subordinate and inferior liens), such action being binding upon all of them, shall take all steps required under the Act to regroup and merge the filial estates with the principle property, whereupon: (1) the Project shall be deemed to be owned in common by the Owners; (2) the undivided interest in the Project owned in common which shall appertaiu to each Owner shall be the undivided previously owned by such Owner in the Common Elements; (3) any liens on each Unit and that certain portions of the Common Elements appurtenant thereto shall be deemed to be transferred in accordance with their existing priorities to the undivided interest of the Owner of the affected Unit; and (4) notwithstanding the foregoing provisions hereof, in the event of destruction or substantial damage to two-thirds (2/3) or more of the Project, one hundred percent (100%) of the Mortgagees, by written approval, and the Owners holding at least seventy-five percent (75.0%) of the undivided interests in the Common Elements, by affirmative vote or written approval, may elect to see or otherwise dispose of the project, such action to be binding upon all Owners and Mortgagees (including mortgagees holding subordinate and inferior liens), whereupon it shall thereupon become the duty of every Owner and Mortgagee to execute and deliver such instruments to perform all acts as in any manner and form may be necessary to effect the sale.

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

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

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

10.9.2. Unit Costs. The cost of restoring that part of the damage caused by the Casualty to the Common Elements (and any other property covered by Insurance carried by the Association) directly affecting less than all the Owners (hereinafter referred to as the "Unit Costs").

10.9.3. Special Assessment for Deficiency. All insurance proceeds available to the Association with respect to the Casualty shall first be applied to the payment of the actual Common Element Costs and the balance thereof, if any, shall thereafter be applied to the payment of the actual Unit Costs. However, if such insurance proceeds are not sufficient to cover such estimated costs, then a Special Assessment or Assessments shall be made against the Owners by the Association in the following manner: (1) all Owners shall be assessed, on the basis of the Common Interest in the Common Elements, for the payment of the estimated Common Element Costs not otherwise paid for by Insurances held by the Association: (2) each Owner of a damaged Unit shall be assessed an amount equal to the difference between the actual portion of estimated Unit Costs attributable to his Unit less the sum calculated by multiplying the amount, if any, of the remaining insurance proceeds held by the Association with respect to the Casualty by a fraction, the numerator of which is the actual portion of the estimated Unit costs attributable to his Unit and the denominator of which is the total of all the estimated Unit Costs.

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

11. ARTICLE XI Condemnation

11.1. General Duties of Association. If all or any part of the Project is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain, the Association, each Owner and each Mortgagee shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give written notice of any such threat or proceeding to all Owners and to all Mortgagees. The expense of participating in any negotiations or proceedings by the Association shall be paid out of the Common Expenses. The Association is specifically authorized to obtain and pay for such assistance form attorneys, appraisers, architects, engineers, expert witnesses and other person as the Association in its discretion deems necessary or available to aid it in matters relating to such negotiations or proceedings. All damages or awards for any such taking shall be deposited with the Association and shall be applied as provided herein. In the event that an action in eminent domain is threatened or brought to condemn a portion of the Common Elements (together with or apart from any Unit), the Association, in addition to the general powers expressed 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 proceedings. With respect to any such taking, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for the taking are determined, the damages or awards shall be paid to the Association for the account of each Owner and each Mortgagee as their interest may appear. The Association, if it deems advisable, may call a meeting of the owners and Mortgagees, at which meeting the Owners, by the affirmative votes of Owners holding sixty-seven percent (67.0%) or more of the undivided interests in the Common Elements, and the Mortgagees by affirmative vote of one hundred percent (100%) thereof, shall decide whether to replace or restore the Common Elements so taken or so damaged. In the event it is determined that such building additional structures, this Declaration and the Condominium Plan shall be duly amended by instrument executed by the Association as irrevocable attorney-in-fact of the Owners.

11.2. <u>Taking of Less Than the Whole.</u> In the event that such eminent domain proceedings result in the taking of or damage to one or more, but less than all, of the Units, then the damages and awards for such taking shall be determined for each Condominium Unit in accordance with the following provisions:

11.2.1. <u>Units Which may be Made Habitable.</u> The Association shall determine which of the Units damaged by such taking may be made habitable for the purposes set forth I this Declaration, taking into account the nature of the project and the reduced sized of each Unit so damaged.

11.2.2. <u>Association to Determine If Regime to Continue.</u> The Association shall determine whether it is reasonably practicable to operate the remaining Units of the Project, including those damaged Units which may be made habitable, as a Condominium Regime in the manner provide din this Declaration.

11.2.3. <u>Voluntary Termination of Regime.</u> In the event that the Association determines that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be made habitable, then the Association shall call a meeting of Owners and the Mortgagees; and the owners holding seventy-five percent (75.0%) of the Common Interests and one hundred percent (100%) of the Mortgagees, by affirmative vote or written approval, may elect to waive the Condominium Regime in which event the Association, the Owners and the Mortgagees (including mortgagees holding subordinate and inferior liens), such action being binding upon all of them, shall take all steps required under the Act to regroup and merge the filial estates into a single property, whereupon: (1) the Project shall be deem to be owned in common by the Owners; (2) the undivided interest in the Project owned in common which shall appertain to each Owner shall be the undivided interest previously owned by such owners in the Common Elements; and (3) any liens on each Unit and that certain portion of the Common Elements appurtenant thereto shall be deemed to be transferred in accordance with their existing priorities to the undivided interest of the Owners of the affect Unit.

11.2.4. Continuation of Regime. In the event that the Association determines it well be reasonably practicable to operate the undamaged Units and the damaged Units which can be made habitable as a condominium Regime, then the damages and awards made with respect to each Unit which has been determined to be capable of being made habitable shall be applied to repair and reconstruct each Unit so that it is made habitable. If the costs of the work exceeds the amount of the damages or awards, the additional funds required shall be assessed against the Owners in the event that insurance proceeds are insufficient to make necessary repairs following a fire or other casualty. With respect to those Units which may not be made habitable, the award made shall be paid to the joint account of each owner of each such Unit and the Mortgagee thereof; and the remaining portion of such Units, if any, shall become part of the Common Elements. Upon the payment of such award for the account of such Owner as provided herein, such Unit shall no longer be a part of the Condominium Project, and the interest in the Common Elements appurtenant to each remaining Unit which shall continue as part of the Project shall be equitably adjusted to distribute the ownership of the undivided interests in the Common Elements among the reduced number of Owners; and the Declarations shall be amended by the Association accordingly as the irrevocable attorney-in-fact for the Owners.

11.3. Taking of the Whole. If the entire Condominium project is taken, all damages and awards shall be paid to the Association for the accounts of the Owners of the Units and the Mortgagee of each such, in proportion to the ownership interest in the Common Elements appurtenant to each such Unit; and this Condominium Regime shall terminate upon such payment.

11.4. Superiority of Liens. Notwithstanding any other provision expressed herein to the contrary, no condemnation or sale in lieu thereof shall affect the priority of the lien of any Mortgagee against any unit in the Project or against the proceeds of the condemnation attributable to that Unit.

11.5. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of the Association as attorney-in-fact for all Owners to deal with the Project, in whole or in part, upon its partial or total taking, will full power of substitution in the premises. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and the acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the Association as attorney-in-fact of all Owners as herein provided. All Owners irrevocably constitute and appoint the Association as their true and lawful attorney I their name, place and stead for the purposes of dealing with said Project upon its condemnation in whole or in part as is hereinafter provided. As attorney-in-fact, the Association, by and through its President or any Vice President and Secretary or any Assistant Secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Any repair, reconstruction or replacement made of the Improvement(s) shall be substantially the same condition existing prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The damages and awards received by reason of proceedings in eminent domain or by virtue of the threat thereof shall be available to the Association for the purposes of repair, restoration or replacement unless the owners agree not to rebuild in accordance with the provisions hereinabove set forth. The Association shall have full authority, right and power, as attorney-in-fact, to cause any repair and restoration of the Improvement(s) permitted or required hereunder. Without limitation on the generality of the foregoing, the Association, as said attorney-in-fact, shall have the full power and authority to collect and remit all damages and awards arising out of any proceedings in eminent domain or out of any threat in lieu thereof, to settle and compromise any and all claims arising by reason of such proceedings or threat thereof, to collect damages and awards and to distribute the same to the Association, the Owners and their respective Mortgagees (subject to the provisions hereof) as their interests may appear, to execute release of liability and to execute all documents and to do all things on behalf of such owners, the Association and the Project as shall be necessary or convenient to the accomplishment of the foregoing; and any condemning authority may deal exclusively with the Association in regard to such matters. The Association, however, shall not be responsible for any damages or awards respecting the taking of any content or the interior of any Unit which are not part of the Common Elements.

12. ARTICLE XII General Provisions

12.1. Association or Declarant as Attorney-in-Fact and Proxy. Whenever the Association or the Declarant is appointed hereunder as the attorney-in-fact or proxy for any Owner, the power thereby vested in the Association or the Declarant shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of the Owner and shall furthermore survive the transfer, assignment and conveyance of a Unit or any part thereof by an Owner and shall be binding upon the legal representatives, administrators, executors, successors, heirs and assigns, of each such Owner.

12.2. Separate Taxation. Each Unit, together with its Common Interest, shall be deemed to be a separate and distinct entity for the purpose of the assessment and collection of taxes, assessments and other charges of the state, and the assessments and other charges of any political subdivision special improvement district or other taxing or assessing authority. The liens for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit shall divest or in any way affect title to any other Unit. In the event that such taxes or assessments for any year are not separately assessed to each Unit but rather are assessed on the Project as a whole, then each Owner shall pay a share thereof proportionate to the Common Interest appurtenant to each such Owner's Unit; and in such event, such taxes or assessments shall be a Common Expense. If consideration appropriate by the Association, a Special Assessment or Assessments may be levied against any Unit in an amount equal to the taxes and other assessments attributable to any such Unit.

12.3. Enforcement of Obligations of Owners. The Association, any owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, limitations , covenants, reservations, easements, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorney's fees as are ordered by the Court; provided, however, that an individual Owner shall have no right to enforce the collection of any Assessment levied by the Association against any other. Failure by any such Person to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

12.4. Invalidity of Any Provision. Should any provision of this Declaration or any of the other Project Documents be declared invalid or in conflict with any law of the jurisdiction where the project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

12.5. Encroachment and Protrusion Easements. Each Unit within the project is hereby declared to have an easement over all adjoining Units and the Common Elements (and the Association, as trustee for all Unit owners, is hereby declared to have an easement over all of the Units in the Project) for the purpose of accommodating any encroachment and/or protrusion due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be valid easements for the maintenance of said encroachments and/or protrusions as long as they shall exist, and the rights and obligations of the Owners and the Association shall not be altered in any way by said encroachment, protrusion, settlement or shifting; provided, however that in no event shall a valid easement for encroachment or protrusion be created in favor of an Owner or Owners if said encroachment or protrusion occurred due to the willful misconduct of said Owner or Owners. In the event a structure (including a structure which constitutes any part of the common elements) is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments and/or protrusion over adjoining Units or Common Elements shall be permitted and that there shall be a valid easement for the maintenance of said encroachments and/or protrusions so long as they shall exist. Such encroachments or protrusions shall not be considered to be encumbrances either on the Common Elements or on a Unit for purposes of marketability of title or otherwise.

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

Managing Agent or the Board in accordance with the Declaration or By-Laws, shall be deemed to be performed or furnished with the express consent of each owner and shall be the basis for the filing of a lien pursuant to law against each Unit in the Project.

12.7. <u>Owner's Right and Obligation to Maintain and Repair.</u> Except for those portions of the Project which the Association is required to maintain as provided herein and in the By-laws, each Unit Owner shall, at his sol cost and expense, maintain and repair his Unit and any Limited Common Elements appurtenant to his Unit, keeping the same in good condition. Additionally, each Owner shall, at his sole cost and expense, maintain, repair and replace as necessary any separate air conditioning and heating units which service only his Unit. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Unit. In the event an Owner fails to maintain his Unit as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify such Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event such Owner fails to complete such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner and, if necessary, create a lien against his Unit for the amount thereof.

12.8. <u>Mortgagee Protection Clauses.</u>

12.8.1. <u>Right of Mortgagees.</u> No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any Mortgagee on any Unit made in good faith and for value; but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, unless otherwise provided herein.

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

12.8.3. <u>Notice to and Access to Records by Mortgagees.</u> All Mortgagees, including any Institutional Guarantor and any Institutional Insurer of the payment of any part of a loan or other extension of credit secured by a mortgage, that have filed with the Association an appropriate written request shall be entitle to receive the following notices in writing form the Association and /or to have access to certain records of the Association in accordance with the following:

12.8.3.1. Notice of any proposed change in the Project Documents, which shall be given thirty (30) days prior to the effective date of such change;

12.8.3.2. Notice of defaults hereunder (including without limitation any delinquency in the payment of any Assessment) on the part of the Owner of the Unit subject to a mortgage in which such Mortgagee, Institutional Guarantor or Institutional Insurer has any interest, which default is not cured within sixty (60) days;

12.8.3.3. Notice of any material loss to or taking of any portion of any individual Unit subject to a Mortgage in which any such Mortgagee, Institutional Guarantor or Institutional Insurer has any interest, which notice shall be given immediately by the Board after the Board obtains knowledge of such loss or taking;

12.8.3.4. Notice of any material loss to or taking of any portion of the Common Elements or facilities or improvements thereon, which notice shall be given immediately by the Board after the Board obtains knowledge of any such loss or taking;

12.8.3.5. Notice of any proposed action that would require the consent of a specified percentage or number of Mortgagees;

12.8.3.6. Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, such notice to be given as promptly as possible; and

12.8.3.7. Make available, for inspection during normal business hours or under other reasonable circumstances, and any then current versions of this Declaration, the By-Laws and any Rules and Regulations concerning the Project and the books, records and financial statements of the Association.

12.8.4. Mortgagee's Consent to Termination or Amendment. The Condominium Regime hereby created cannot be terminated or waived without the consent or approval of one hundred percent (100%) of the Mortgagees (including mortgagees holding subordinate and inferior liens). No material amendment, modification or change to any of the Project Documents can be effected without the consent or approval of one hundred percent (100%) of the Mortgagees.

12.8.5. Priority of Liens of Mortgagees. The sale or transfer of any Unit pursuant to foreclosure by a Mortgagee, or by deed or other transfer in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer except for assessment reflected by a written assessment lien prepared in accordance with the above provisions and duly recorded prior to the recordation of a mortgage or deed of trust held by a Mortgagee or in which any Mortgagee may have an interest). However, a Mortgage recorded prior to the recordation of a written assessment lien shall remain superior to such assessment lien, even though such mortgage is renewed and extended following the recordation of such assessment lien.

12.8.6. Lease Restrictions Not Binding Upon Mortgagee in Possession. The provisions of the Project Documents restricting the power of the Unit owner to enter into leases shall not be binding upon any Mortgagee in possession of any Unit resulting from a default in the payment or performance of the mortgage so held. However, such restrictions shall be binding upon any person who purchases such Unit from such Mortgagee or such Mortgagee's designee.

12.9. Termination of Regime and Amendments to Project Documents.

12.9.1. Termination. Unless otherwise required by the Act, the Condominium Regime created hereby can be terminated with the consent of one hundred percent (100%) of the Mortgagees and the Owners representing an aggregate ownership interest of at least seventy-five percent (75.0%) of the undivided interests in the Common Elements (but not less than the Owners, other than Declarant, of at least two-thirds (2/3) of the Units in the Project); and when such consent or approval is given, then all of the Owners and all of the Mortgagees (including all mortgagees holding subordinate and inferior liens) shall take all steps required under the act to regroup and merge the filial estates with the principal property, whereupon; (1) the Project shall be deemed to be owned in common by the Owners; (2) the undivided interest in the Project owned in common which shall appertain to each Owner shall be the undivided interest previously owned by such owner in the Common Elements; and (20 any liens on each Unit and that certain portion of the Common Elements appurtenant thereto shall be deemed to be transferred in accordance with their existing priorities to the undivided interest of the Owner of the affected Unit.

12.9.2. Technical Amendments.

12.9.2.1. Compliance With Regulations and Requirements of Mortgagees and With Applicable Law. The Declarant intends that the Project shall comply with all requirements of all Mortgagees wishing to make, purchases or guarantee loans or other extensions of credit secured by Mortgages against any of the Units in the Project and, also, to comply with all applicable statutes, ordinances and rules and regulations of all quasi-governmental bodies having jurisdiction. The Declarant furthermore intends that this Declaration shall contain no typographical or grammatical errors. Declarant and all Owners therefore agree that, notwithstanding anything to the contrary contained herein, in the event that the Project or any of the project Documents do not comply with the requirements or regulations of any Institutional lender who is or desires to become a Mortgagee (including, without limitations, the requirements and regulations of FHLMC and FMNA pertaining to the purchase of home loans or the requirements and regulations of the FHA or VA pertaining to the guaranty of any home loans) or with any applicable statute, ordinance or rule or regulation, the Declarant, so long as the Declarant owns any Unit in the Project, or the Board, if the Declarant should then have no interest remaining in the Project, shall have the power (on behalf of the Association and each and every Owner) to amend the terms of this Declaration and the By-Laws and/or to enter into any agreement with any Institutional Lender (or their designees) reasonably required by any of such Institutional Lenders to allow the project to comply with such requirements or regulations or, simply in order to comply with any applicable statute, ordinance or rule or regulation. Similarly, the Declarant or the board shall have the power to amend the terms of this Declaration or the By-Laws for the purpose of correcting any typographical or grammatical errors. Such power shall not include the authority to amend this Declaration or the By-Laws or enter into any agreement that would have the effect of violating the requirements or regulations of any Institutional lender which is then a Mortgagee.

12.9.2.2. Minor Amendments of Map. So long as the Declarant owns any Unit in the Project, the Declarant, and after the Declarant no longer owns any Unit in the Project, the Board, shall have the right at any time and from time to time to assign and to reassign parking spaces and storage areas, if any, to Owners as Limited Common Elements appurtenant to the Units owned thereby, such right to include the power, without the necessity of obtaining the consent of any owner, to amend the Map accordingly. Moreover, so long as the Declarant owns any Unit in the Project, the Declarant, and after the Declarant no longer owns a Unit in the Project, the Board, may, without the consent of any owner, amend the Map to conform such to the actual location of any of the improvements, to establish, vacate and relocate easements, access road easements, parking spaces, to establish certain General Common Elements not theretofore established, to establish certain General Common Elements as to Limited Common Elements, and to show such other changes as Declarant or the Board may make in accordance with the terms of this Declaration.

12.9.2.3. Special Rights of Declarant. Notwithstanding any provision in this Declaration to the contrary, until all of the Units in the Project are conveyed by Declarant to a third party, Declarant, with respect to any Unit or Units remaining in the ownership of Declarant, shall have the right to: (1) physically combine the space within one Unit with the space within one or more adjoining Units, to redetermine the Common Interest of the Units so combined and to amend the Declaration and Map to include said changes; (2) physically combine part of or a combination of parts of the space within one Unit with part or parts of space within one or more adjoining Units, to redetermine the Common Interest of the Units so combined and amend the Declaration and map to include said changes; (3) partition or subdivided any Unit into two or more Units, Common Elements, or a combination of Units and Common Elements, to redetermine the Common Interest of those Units so partitioned or subdivided, and, if applicable, of all other Units, and to amend the declaration and Map to include said changes; and (4) modify or remodel one or more Units into larger or smaller Units or any combination thereof, to construct, alter, relocate or remove any walls or so any other work which may be necessary to complete such modification or remodeling, to redetermine the Common Interest of the Units altered, if any, and to amend the Declaration to include said changes; but (5) a redetermination of the Common Interest of those Units so partitioned or subdivided by the Declaration shall not include the power to redetermine the Common Interest which each then Owner of a Unit will have in the Common Elements, such power of redetermination to be limited to those Units so partitioned or subdivide by the Declarant.

12.9.3. Minor Amendments. So long as the Declarant owns any Unit in the Project, the Declarant, and after the Declarant ceases to won any Units in the Project, the Board, with the consent of any Mortgagee affected and the consent of the owner affected can amend, modify or change any provision of any of the project Documents which does not otherwise materially adversely affect any other Mortgagee or owner.

12.9.4. Material Amendments. No material provision of any of the Project Documents may be amended, modified or changed unless all of the Mortgagees and unless the Owners representing an aggregate ownership interests of at least sixty-seven percent (67%) of the undivided interests in the Common Elements (but not less than the Owners, other than Declarant, of at least two-thirds (2/3) of the Units in the Project) consent and agree to any such amendment, modification or change by instrument or instruments duly recorded. [The termination or waiver of the Condominium Regime crated hereby shall be governed by the provisions set forth above and not by the provisions of this Subsection.] An amendment, modification or change of any provision in the Project Documents affecting any of the following will be considered material: (1) voting rights of Owners and Mortgagees; (2) Assessments, Assessment liens, or subordination of Assessments Liens; (3) reserves for maintenance, repair and replacement of Common Elements; (4) the responsibility of Association and the Owners, respectively, for maintenance and repairs; (5) the reallocation of interests in the General or Limited Common Elements, or the rights to the use thereof; (6) boundaries of any Unit; (7) convertibility of Units into Common Elements or vice versa; (8) the expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the project; (9) insurance or fidelity bond; (10) leasing of Units; (11) the imposition of any restriction on a Unit Owner's right to sell or transfer his or her Unit; (12) a decision by the Association to establish self-management when professional management has been required previously by a mortgagee; (13) the restoration or repair of the Project (after a Casualty damage or partial condemnation) in any manner other than that specified in the project Documents; (14) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; (15) any provisions that expressly benefit Mortgagees, institutional Insurers or Intuitional Guarantors; or (16) the use of hazard insurance proceeds for losses to any property on the project 9whether to Units or to Common Elements) for other than the repair, replacement or reconstruction thereof, except as provided by applicable statute in case of substantial loss or damage to the Units and/or the Common Elements.

12.9.5. Presumption of Consent of Mortgagees. In the event that a mortgagee is requested to approve an amendment, modification or change to any of the Project Documents and fails to deliver a negative response to the requesting party within thirty (30) days after receipt thereof, then it shall be conclusively presumed that such Mortgagee has approved any such request.

12.9.6. Declarant or Association as Attorney-in-Fact and Proxy for the Purpose of Amending the Project Documents. This Declaration does herby make mandatory the irrevocable appointment of Declarant, so long as the Declarant owns any Unit in the Project, and the Association, after the Declarant no longer owns any Unit in the project, the attorney-in-fact and proxy of the Owners, with full power of substitution in the premises, for the purpose of amending any of the Project Document as permitted by the provision of Sections 12.9.3.2 and 12.9.3 above and Sections 12.16.1 and 12.16.2 below; but neither the Declarant nor the Association may, unless so authorized independently of the provisions of this Declaration, represent owners in such capacities for the purpose of amending any of the Project Documents as permitted by Section 12.9.4 above. Title to any Unit is declared and expressly made subject to the terms and conditions hereof; and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any owner as grantor shall constitute and appoint the Declarant, so long as the Declarant owns a Unit in the Project, and the individuals comprising the Board of the Association from time to time, after the Declarant no longer owns any Unit in the Project, the irrevocable attorney-in-fact of the Owners and the irrevocable proxy (for as long a period of time as is permitted by law) of the Owners, with full power of substitution in the premises, to take any action, sign any writing, cast any vote at any meeting of the Members of the Association and do and perform any other act or deed of any kind whatsoever, whether or not of the sort expressed above, necessary, or reasonably thought to be necessary, in the judgment and discretion of the Declarant or the Association, to effect and prefect any amendment to any of the Project Documents for any reason or objective expressed in or allowed by Sections 12.9.2 and 12.9.3 above and Sections 12.16.1 and 12.16.2 below. The power hereby reposed in the Declarant and the Association includes, without limitation, the authority to execute an original irrevocable proxy as the act or deed of any Owner and to execute, upon the termination of any proxy a successive irrevocable proxy as the act and deed of any Owner, authorizing the Declarant or the Association, or any substitute appointed thereby, to cast a vote for such Owner at any meeting of the members for the purpose of approving or consenting to any such amendment; but the power hereby reposed in the Declarant and the Association does not include the authority, unless given independently of this Declaration, to act for any Owner for the purpose of amending any of the Project Documents for any reason or purpose permitted by the provisions of Section 13.9.4 above. Furthermore, each Owner, upon request by the Declarant or the Association, will execute and deliver an irrevocable written proxy, including a successive proxy when an earlier proxy terminates, authorizing the Declarant or the Association, or any substitute appointed thereby, to cast a vote for such Owner at any meeting of the members for the purpose of approving or consenting to any such amendment, other than tan amendment permitted by t eh provisions of Section 12.9.4 above.

12.9.7. <u>Statements Required by Statute.</u> The following statements are included herein in order to comply with the provisions of the Texas Condominium Act, as amended by the 68th Texas Legislature meeting in Regular Sessions; (a) this Declaration may only be amended at a meeting of the members of the Association at which the amendment is approved by the holders of at least sixty-seven percent (67%) of the ownership interests in the Project; (b) an amendment of this Declarations may not alter or destroy a Unit or a Limited Common Element without the consent of the Owners and Mortgagees affected. Notwithstanding any provision in this Subsection to the contrary, if the approval of a greater number of Owners are required by any other Section or Subsection for adopting any such amendment, then the consent of such greater number shall be obtained before any such amendment will be effective.

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

12.11. Owner's Compliance. Each Owner, tenant or occupant of a Unit and their guests and invitees shall comply with the provisions of the project Documents and all lawful decisions and resolutions of the Association or its duly authorized representative, and failure to comply with any such provisions, decision resolutions, shall be grounds for an action by the Association to recover sums due for damages (including costs and reasonable attorney's fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Declaration or in the By-Laws, shall be deemed to be binding upon all Owners, their successors and assigns.

12.12. Legal Intent. It is the intent of Declarant, the Association and the owners that the project Documents be in strict compliance with applicable usury laws. In furtherance thereof, said parties stipulate and agree that none of the terms and provisions contained in the Project Documents shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum Interest rate permitted to be charged by applicable laws of the State of Texas or the United States of America. The owners or other parties now or hereafter becoming liable for payment of sums owing under the terms of the project Documents hall never be liable for unearned interest on any of said sums and shall never be required to pay interest at a rate in excess of the maximum interest that may be lawfully charged under applicable laws of the State of Texas or the United States of America, and the provisions of this Section shall control over all other provisions of the Project Documents in conflict herewith. In the event that the Declarant, the association or any of its designated agents shall collect monies which are deemed to constitute interest at a rate in excess of that permitted to be charged by applicable laws of the State of Texas or the United States of America, all sums deemed to constitute interest in excess of the legal rate shall be immediately returned to the Owner or other party so paying said monies upon such determination.

12.13. Conflicts of Project Documents. If there is any conflict among or between the project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Map; Articles; By-Laws; and Rules and Regulations of the Association.

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

12.15. Value of Votes of Owners. Whenever this Declaration requires the consent or vote or approval of Owners holding a percentage of the undivided interest in the Common Elements, the value of the vote (whether at a meeting of the Association or by way of an act of consent or by way of an act of approval) shall equal the Common Interest assigned to each of such Owner's Unit as provided in this Declaration.

12.16. Reservation of Rights by Declarant. So long as Declarant owns any Unit in the project, Declarant, in addition to all other rights reserved herein by Declarant, reserves the following rights:

12.16.1. Corrections of Minor and Technical Errors and Compliance With Requirements of Institutional Lenders. The Declarant, as provided above, may, without the further consent of any Owner and without the consent of any Mortgagee, amend, modify or change any of the Project Documents for the purpose of correcting minor and technical errors and for the purpose of complying with the requirements of Institutional Lenders.

12.16.2. Amending the Map. So long as the Declarant owns any Unit in the Project, the Declarant , without the further consent of any Owner or any Mortgagee, may, as provided more specifically above, amended the map (including any amendment to the Map) to show the assignment or reassignment of any parking space or storage area to show the location of any easement, to reflect any change in any General or Limited Common Elements, and to depict the actual location of any structures comprising any part of the Project. The Declarant may also partition or subdivided an unsold Unit or Units and amend the Map and other provisions of the Project Documents accordingly, all as more specifically provided above.

12.16.3. Rights to Use Easements. So long as the Declarant owns at least one of the Units in the Project, Declarant may use, for Declarant's benefit (including the power to authorize other to use such for Declarant's benefit), any easement over and under the Property for the installation, repair and maintenance of sanitary sewer, water electric, gas, and telephone lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping, together with the right of egress from such easements, in order to make any connections, repairs, maintenance and replacement as Declarant in its discretion deems advisable.

12.16.4. Model Unit. So long as the Declarant owns at least one Unit of the Units in the project, the Declarant may use any Unit or units it the Project owner by Declarant for display and sales office.

12.16.5. Leases. So long as the Declarant owns at least one Unit in the Project, then the right of the Declarant to rent or lease any and all such Units until their initial transfer to any third party or parties is hereby specifically reserved, including the right of Declarant to lease any such Unit for a term of less than thirty (30) days.

12.16.6. Use of Common Elements. Declarant is, or may after the effective date hereof be, perfuming certain work in connection with the construction of improvements on the Property, including the construction of Buildings and Units shown on the Map which have not been completed, if any. The completion of that work and the sale, rental and other disposition of said Units is essential to the establishment and welfare of the project a sa residential community. In order that such work may be completed and such project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to: (1) prevent Declarant, its contractors, or any subcontractors from doing on or to the Project or any Unit, whatever is reasonably necessary or advisable in connection with the completion of the work; (2) prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said project as a residential community and disposing of the same in parcels by sale lease or otherwise; (3) prevent Declarant from conducting on any part of the Project its business of completing the work and establishing a plan of Unit ownership and disposing of said project and Units by sale, lease or otherwise; or (4) prevent Declarant from maintaining such sign or signs on ay part of the project as may be necessary for the sale, lease and disposition thereof.

12.17. Limitations Upon Declarant.

12.17.1. Limitations Upon Declarant's Contractual Powers. The Declarant shall not have the right to engage in any of the following leases or contracts, directly or indirectly (including the use of authority of the Board of Directors appointed or otherwise controlled by Declarant), unless such lease or contract provides that the Association, after transfer or loss of control thereof by Declarant, may terminate the Declarant's rights thereunder, with or without cause, exercisable without penalty at any time upon not more than ninety (90) days' written notice to the Declarant: (1) the leasing of any common facilities to the Association; (2) accepting leases from the Association for the use of which the Association may then charge Unit Owners or any parties who are not Unit Owners; (3) accepting franchises or licenses from the Association for the provision of central TV antenna or similar services; and (4) retaining the right to enter into management agreements or other contracts which are not terminable by the Board of Directors elected at the First Annual Meeting of the Association immediately after the election thereof.

12.17.2. Limited Obligations of Declarant. Notwithstanding any provision to the contrary expressed in any of the Project Documents, no Assessment of any kind may be levied against the Declarant or any unit owned by the Declarant, until the earlier of the following dates: the first day of the calendar month next following the First Annual meeting of the Association or the first day of the Calendar month next following the expiration of three (3) years after the effect date of this Declaration, and then only with respect to Assessments becoming due an payable on and after such earlier date. However, until the earlier of such dates, the Declarant shall be obligated to pay, as needed, any deficit or shortage that may arise in connection with the operations of the Association. The duty of Declarant to underwrite such deficit or shortage shall not be construed as a covenant of indemnity against injury sustained by persons or property, loess which occur by reason of fire or flood or other casualty, losses caused by theft, embezzlement and like misdeeds not committed by Declarant, or any other cost or expense incurred outside of the scope of the ordinary and customary activities of the Association; instead, Declarant's responsibilities under this Section shall be limited to the payment of costs and expense of paying for property and services which exceed the amount or amounts incorporated therefor in any budget adopted by the Association.

12.18. Value of Common interest. The Common Interest appurtenant to each Unit is expressed as a fraction, and all the fractions will total precisely one (1). The fractional interest have been determined by Declaration without special regard to the relative sizes and/or values of the Units in the Regime and have been allocated t the Units by the Declarant in the conviction that such fractional interests, used as a measure of each Owner's vote and contribution to Regular Assessments, will best serve the interest of the condominium Regime hereby created.

The undersigned, being the Declarant herein, has executed this Declaration on the 19th day of August, 1983.

Sydney Eugene Rutledge
SYDNEY EUGENE RUTLEDGE

RALPH JUDE RAMIREZ

1 330

THE STATE OF TEXAS §
§
COUNTY OF Hays §

BEFORE ME, the undersigned authority, on this day personally appeared SYDNEY EUGENE RUTLEDGE, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 22 day of August, 1983.

Wm R Fitzgerald
NOTARY PUBLIC, State of Texas
Wm. R. Fitzgerald
(Print or type name of Notary)
My commission expires: 9-25-84

NOTARY PUBLIC STATE OF TEXAS

THE STATE OF TEXAS §
§
COUNTY OF HAYS §

BEFORE ME, the undersigned authority, on this day personally appeared RALPH JUDE RAMIREZ, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 19th day of AUGUST, 1983.

Louise Roberts
NOTARY PUBLIC, State of Texas
LOUISE ROBERTS
(Print or type name of Notary)
My commission expires: 2-7-85

NOTARY PUBLIC STATE OF TEXAS

TRACT 1

Being a portion of Lots 84 and 85, Third Division, Park Addition, an addition in the City of San Marcos, Texas. Recorded in Volume 56, Page 47, Hays County Deed Records, same being that tract of land conveyed to S. E. Rutledge and Ralph Ramirez by Stanley and Leona Leffingwell by deed dated February 18, 1983, and recorded in Volume 388, Page 664, Hays County Deed Records, and being more particularly described by Metes and Bounds as follows, to-wit:

Beginning at an iron stake set at the East corner of the said Lot 84, same being at the North corner of a 16 foot alley, and being on the Southwest line of Chestnut Street, for the Northeast corner of the tract herein described;

Thence, leaving the said Chestnut Street, with the Northeast line of the said 16 foot alley, S 43° 42' W, at 170.14 feet passing an iron stake set for the South corner of the said Lot 84, same being the East corner of the said Lot 85, and continuing on, in all, a distance of 340.14 feet to an iron stake set at the West corner of the said 16 foot Alley, for the South corner of the tract herein described, same being on the Northwest line of Cherry Street;

Thence, leaving the said alley, with the Northwest line of the said Cherry Street, the Southwest line of the said Lot 85, N 45° 10' W, 61.67 to an iron stake set at the South corner of that portion of Lot 84 and 85 conveyed to Barton Gill by Stanley and Leona Leffingwell by deed dated September 10, 1946, and recorded in Volume 135, Page 597, Hays County Deed Records, for the West corner of the tract herein described;

Thence, leaving the said Cherry Street, with the Southwast line of the said Gill tract, N 43° 39' E, at 169.80 feet passing the Northeast line of the said Lot 84, the Southwest line of the aforementioned Lot 85, and continuing on, in all, 340.000 feet to an iron stake found, at the East corner of the said Gill tract, same being on the Southwest line of the aforementioned Chestnut Street, for the North corner of the tract herein described;

Thence, leaving the said Gill tract, with the Southwest line of the said Chestnut Street, the Northeast line of the said Lot 85, S 45° 18' E, 61.95 feet to the POINT OF BE NING containing 0.48 acres of land. Surveyed July 21, 1983.

Exhibit "A" Page One

TRACT 2

Being all of Lot No. 87, Third Division, Park Addition, an addition in the City of San Marcos, Texas. A subdivision of record in Volume 56, Page 47, Hays County Deed Records, same being that tract of land conveyed to S. E. Rutledge and Ralph Ramirez by Bill Radford by deed dated June 30, 1981, and recorded in Volume 360, Page 267, Hays County Deed Records, and being more particularly described by Metes and Bounds as follows, to-wit:

Beginning at an iron stake set at the North corner of the said Lot 87, same being at the East corner of a 16 foot Alley, and being on the Southwest line of Chestnut Street, for the Northwest corner of the tract herein described;

Thence, leaving the said Alley, with the Southwest line of the said Chestnut Street, S 45° 18' E, 92.16 feet to an iron stake set at the East corner of the said Lot 87, same being the North corner of Lot 92 of the said Park Addition, for the East corner of the tract herein described;

Thence, leaving Chestnut Street, and with the West line of the said Lot 92, S 43° 42' W, 170.05 feet to an iron stake found at the South corner of the said Lot 87, same being the West corner of the said Lot 92, the North corner of Lot 93 of the said Park Addition, for the South corner of the tract herein described;

Thence, leaving the said Lot 92, and the said Lot 93, with the Northwest line of the said Lot 86, N 45° 41' W, 92.16 feet to an iron stake found at the West corner of the said Lot 87, same being the North corner of the said Lot 86, and being on the Southeast line of the aforementioned 16 foot Alley, for the West corner of the tract herein described;

Thence, with the Southeast line of the said 16 foot Alley, N 43° 42' E, 170.13 feet to the Point Of Beginning containing 0.36 acres of land. Surveyed July 21, 1983.

Exhibit "A" Page Two

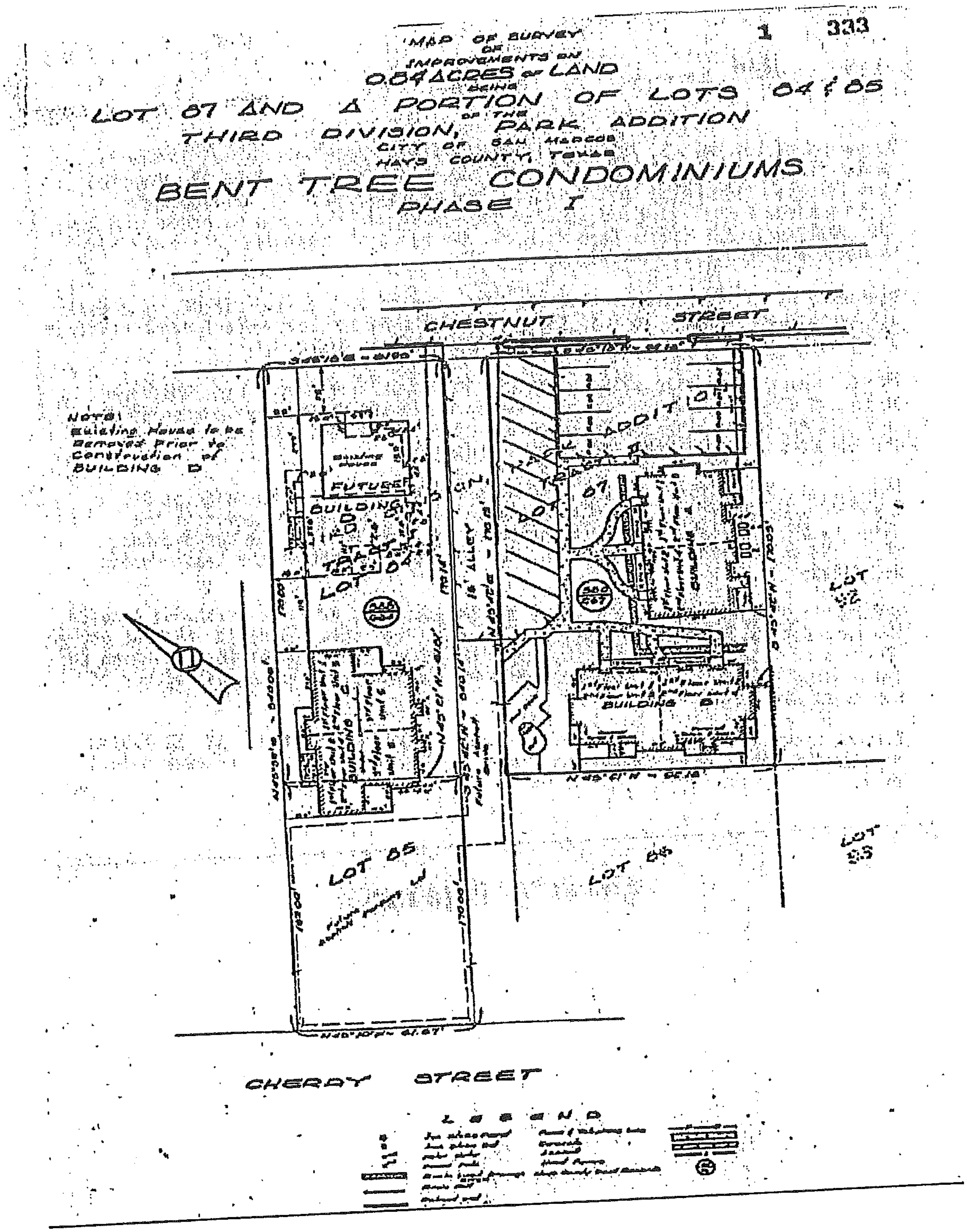


Exhibit "B" Page One of Six

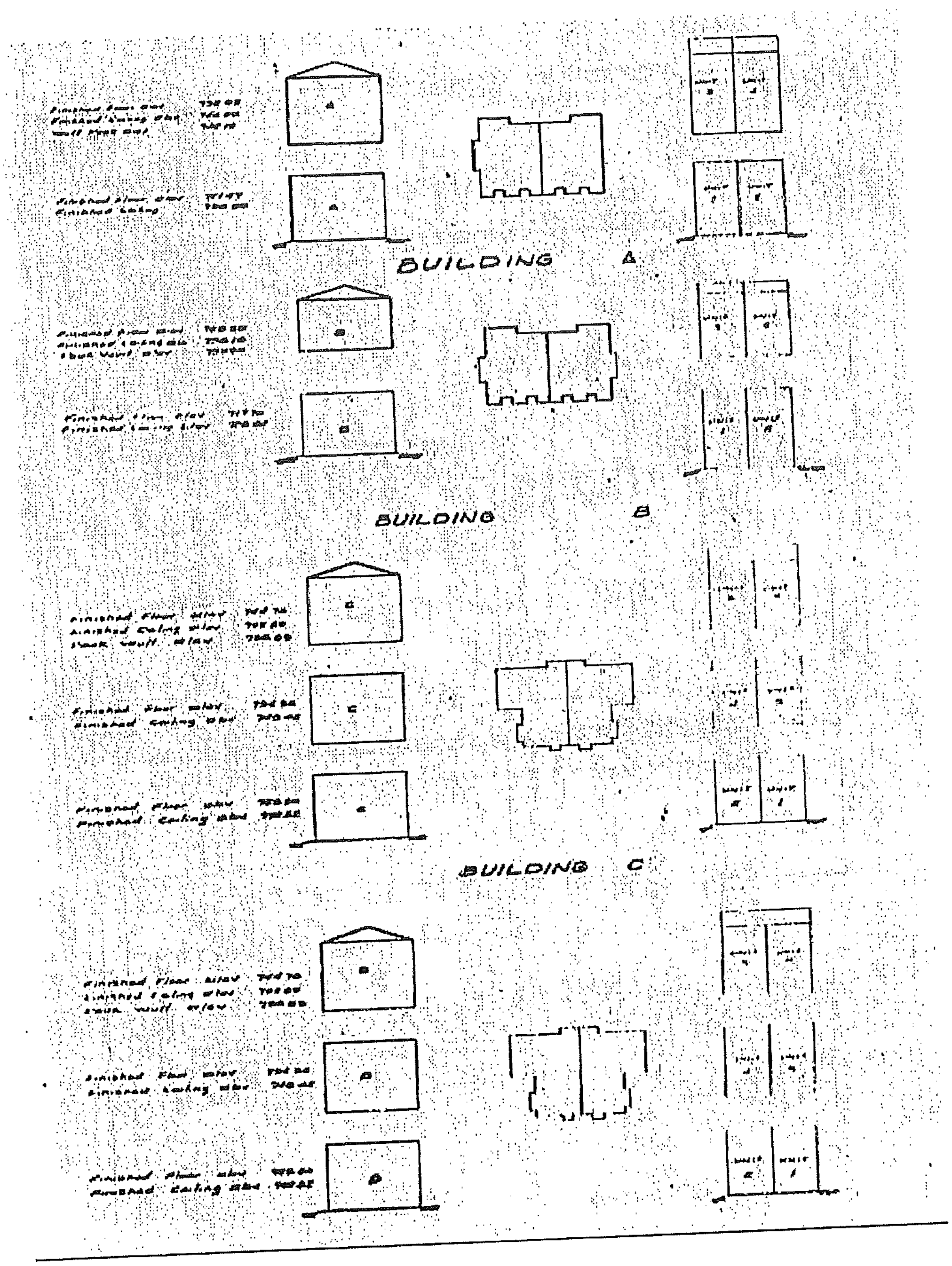


Exhibit "B" Page Two of Six

Building D is Proposed

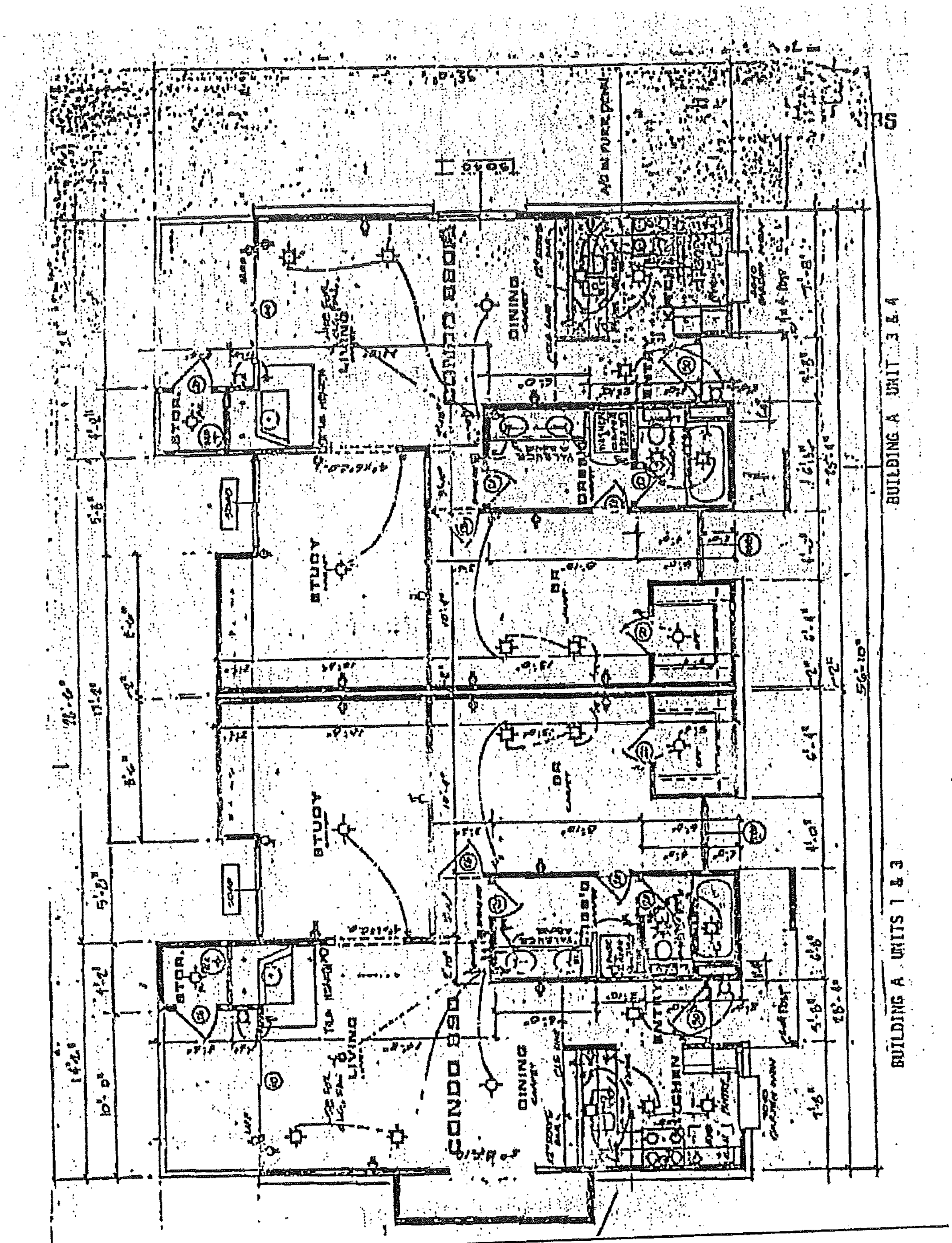
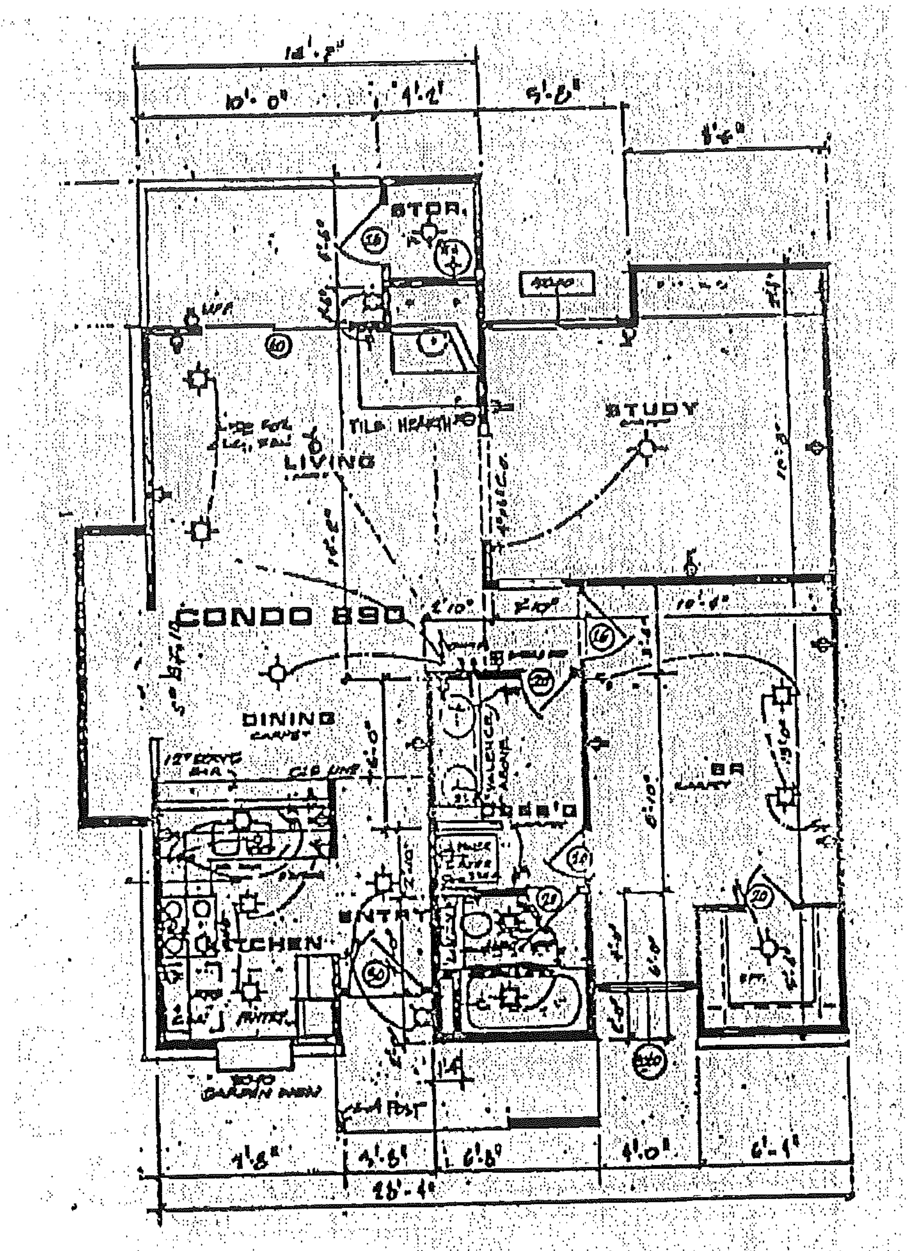


Exhibit "B" Page Three of Six



BUILDING B

Units 1, 2, 3, 4

Exhibit "B" Page Four of Six

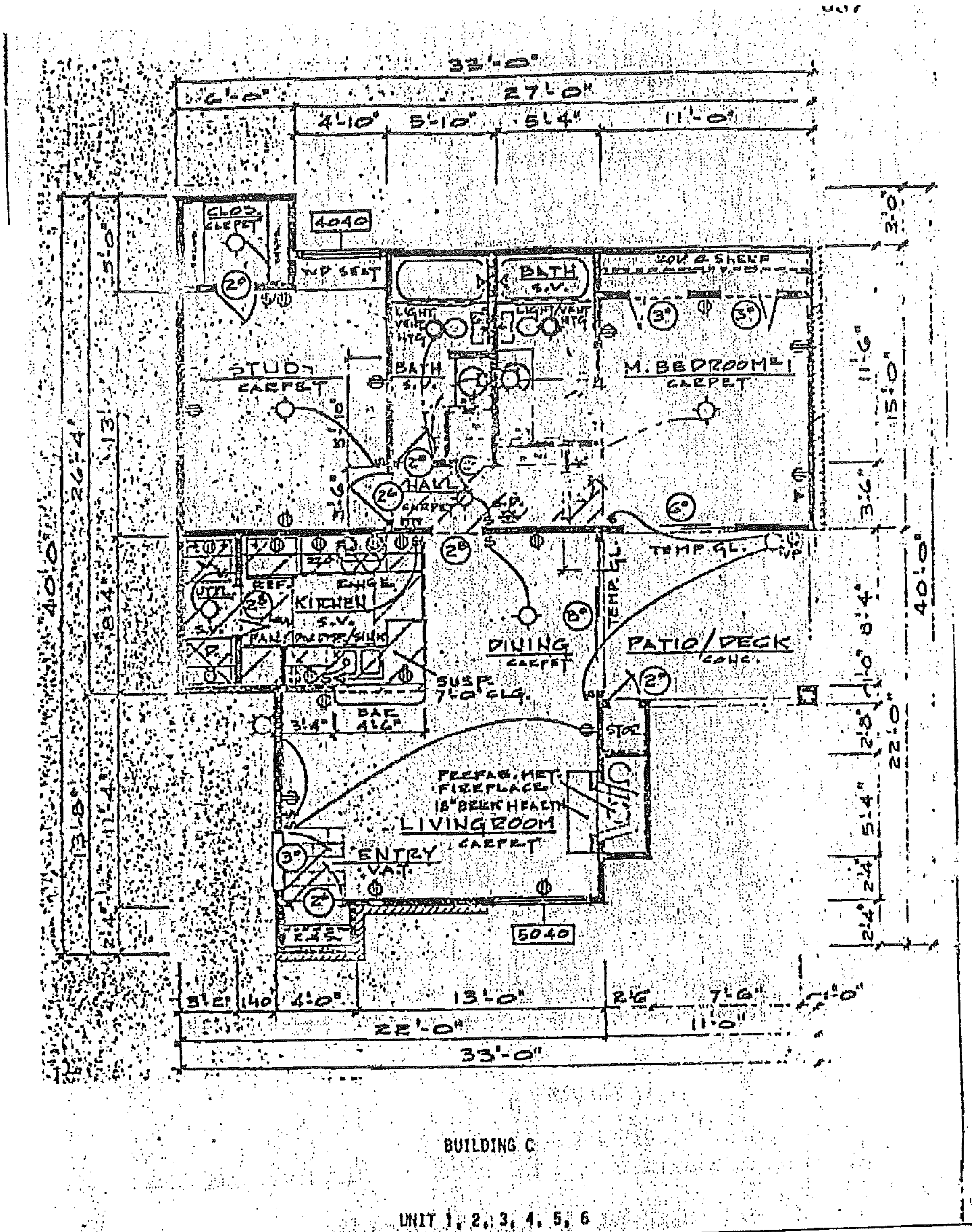
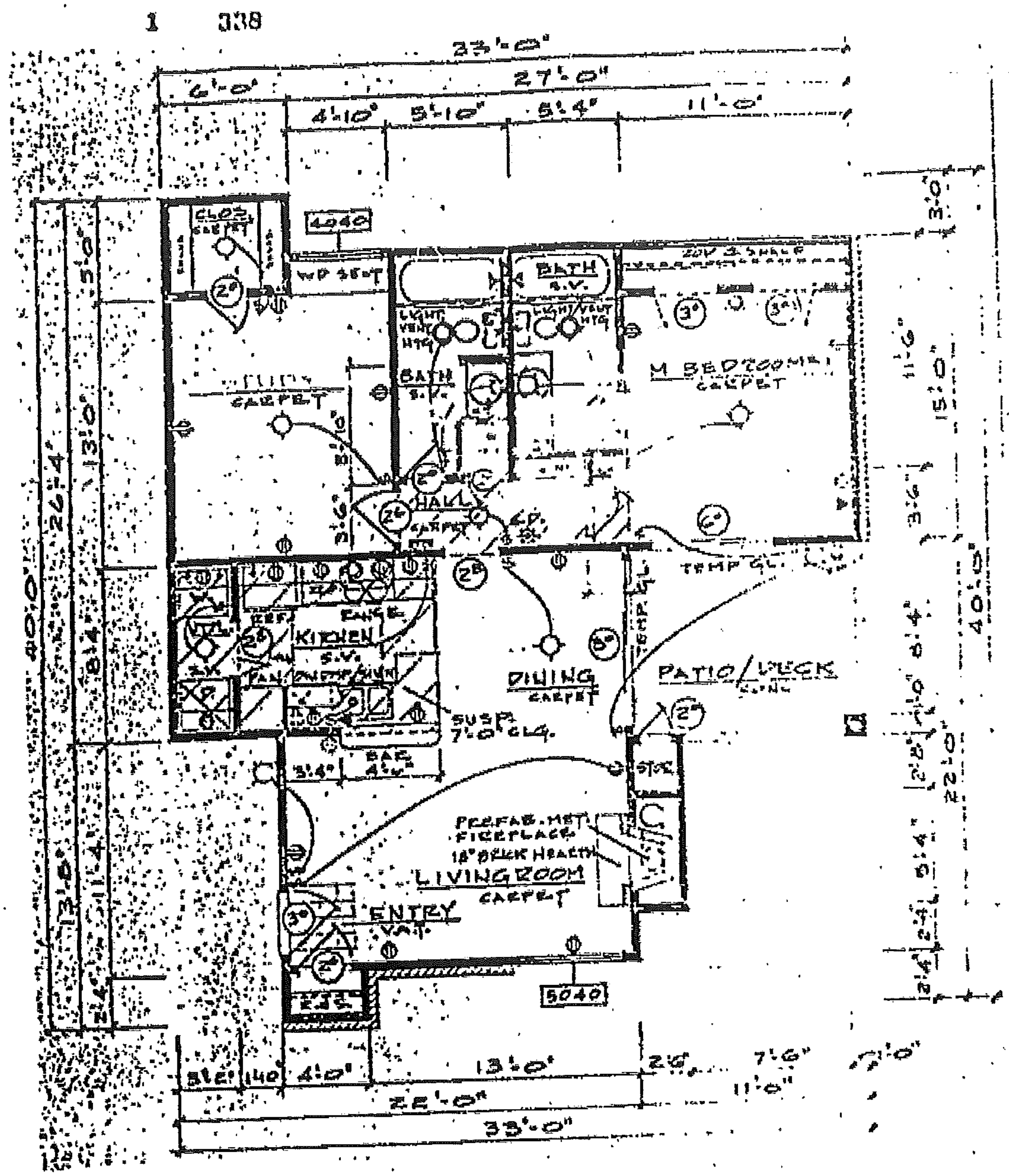


Exhibit "B" Page Five of Six



(AND PROPOSED BUILDING C)

UNIT 1, 2, 3, 4, 5, 6

Exhibit "B" Page Six of Six