

FIRST AMENDED CONDOMINIUM DECLARATION

FOR

HARBOUR POINT CONDOMINIUMS

THE STATE OF TEXAS |
COUNTY OF SAN JACINTO |

KNOW ALL MEN BY THESE PRESENTS, that HOUSTON RESORT PROPERTIES INCORPORATED, a Texas Corporation, with principal offices in San Jacinto County, Texas, and acting herein by and through its duly authorized officers, hereinafter called "Declarant", is the owner of all that said certain real property, including the land, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, located in CAPE ROYALE HARBOUR POINT, San Jacinto County, Texas, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

Said Declarant does hereby amend its ORIGINAL CONDOMINIUM DECLARATION FOR HARBOUR POINT CONDOMINIUMS, the following clauses are amended to read as follows:

ARTICLE 5

RESTRICTIONS AND COVENANTS

5.01 General Restrictions on Use.

- (a) No Co-Owner shall occupy or use his apartment or permit the same or any part thereof to be occupied or used for any other purpose than a private residence.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in the common elements. This section does not include dogs, cats or household pets which may be kept in the owners apartment, subject to the rules and regulations adopted by the Board.

ARTICLE 9

GENERAL PROVISIONS

9.01 Amendment

This declaration may be amended by the vote of written consent of members representing no less than 67% of the voting power of the counsel. Notwithstanding any contrary provisions of this section, the percentage of the voting power necessary to amend a specific clause are provisions of this declaration

shall not be less than the percentage of affirmative votes perscribed for action to be taken under that clause or provision. An amendment of the declar- ation may not alter or destroy a unit or a limited common element without the consent of the owners affected and the owners' first lien mortgagees.

Subject to the above described amendments the CONDOMINIUM DECLARATION FOR HARBOUR POINT CONDOMINIUMS is republished as described in Volume A Page 1 through Page 18 of the Condominium Records of San Jacinto County, Texas, said records being on file in the office of the County Clerk of San Jacinto County, Texas.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 15th day of May, 1984.

HOUSTON RESORT PROPERTIES, INC.

ATTEST
HOUSTON RESORT PROPERTIES, INC.
JUDY BOSWELL SECRETARY

E. Preston Webb
E. PRESTON WEBB, VICE PRESIDENT

THE STATE OF TEXAS X
COUNTY OF SAN JACINTO X

This instrument was acknowledged before me on the 15th day of May, 1984 by E. PRESTON WEBB, Vice President, and JUDY BOSWELL, Secretary of HOUSTON RESORT PROPERTIES, INC., a Texas Corporation, on behalf of said Corporation.

NOTARY PUBLIC
My Commission Expires:
11-23-87

Robert Hill Trapp
Notary Public for the State of Texas
Robert Hill Trapp

LIENHOLDER:
SAM HOUSTON NATIONAL BANK
3012 11th STREET
HUNTSVILLE, TEXAS 77340



Tonie Sikes
VICE PRESIDENT

Robert M. Tavenner
ASSISTANT VICE PRESIDENT

THE STATE OF TEXAS X
COUNTY OF WALKER X

This instrument was acknowledged before me on the 15 day of May, 1984,
by TONIE SIKES and Robert M. TAVENNER

My Commission Expires:

7-26-85

Leuch Floyd
Notary Public for the State of Texas
WALKER County

EXHIBIT "A"

3.4864 ACRE TRACT OF LAND
HARBOUR POINT AREA
DRURY MCGEE SURVEY, A-28
SAN JACINTO COUNTY, TEXAS

Being 3.4864 acres of land situated in the State of Texas, County of San Jacinto, a part of the Drury McGee Survey, A-28, and being out of the lands titled to Mitchell & Mitchell Land Development Company by deed dated January 10, 1968 and recorded in Volume 107, Page 489 of the San Jacinto County Deed Records. Said 3.4864 acre tract being more particularly described as follows:

BEGINNING at the common corner of Lots 7 and 8, Section 4, Villas De Marina Subdivision, Cape Royale as recorded in Volume 5, Page 19, of the Deed Records, San Jacinto County, Texas. Said common corner being the most easterly corner of Lot 77 and the most northerly corner of Lot 8 located in the northeasterly boundary line of said Section 4;

THENCE leaving said boundary line of Section 4 and severing said Mitchell & Mitchell Land Development Company Property, N 49° 46' 38" E, 130.00 feet to a point for corner;

THENCE S 40° 13' 22" E, 123.41 feet to an angle point;

THENCE S 86° 42' 44" E, 179.77 feet to a point for corner;

THENCE S 05° 58' 56" E, 403.51 feet to a point for corner, said point being located on the Trinity River Authority Lake Livingston Fee Taking Line as shown on the City of Houston, Texas, Livingston Reservoir Drawing No. B-30-130;

THENCE along said Fee Taking Line S 61° 42' 00" W, 58.25 feet to an angle point, said point being No. 39 of Parcel "A" as shown on aforementioned Drawing No. B-30-130;

THENCE N 86° 32' 00" W, 341.75 feet to a point for corner;

THENCE leaving said Fee Taking Line N 03° 28' 00" E, 35.85 feet to a point of curvature on the aforementioned Section 4, Villas De Marina Boundary;

THENCE along said Boundary and curve to the left a distance of 147.95 feet, having a radius of 480.00 feet and a central angle of 17° 39' 35" with a chord bearing N 20° 18' 15" E, 147.36 feet to a point of compound curvature;

THENCE along said curve to the left a distance of 270.67 feet, having a radius of 310.00 feet and a central angle of 50° 01' 33" with a chord bearing N 13° 32' 14" W, 262.15 feet to the POINT OF BEGINNING and containing 3.4864 acres of land.

STATE OF TEXAS }
COUNTY OF SAN JACINTO }

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of San Jacinto County, Texas on

MAY 15 1984



Lois Cooksey
LOIS COOKSEY
COUNTY CLERK,
SAN JACINTO COUNTY, TEXAS

FILED FOR
RECORD

1984 MAY 15 PM 3:01

Lois Cooksey
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS

28.00

#1172
Vol. A Pg 1
1.186 Feb. 13, 1984
11:52 AM

CONDOMINIUM DECLARATION

FOR

HARBOR POINT CONDOMINIUMS

THE STATE OF TEXAS

COUNTY OF SAN JACINTO

WHEREAS, HOUSTON RESORT PROPERTIES, INC., a Texas Corporation, with principal offices in San Jacinto County, Texas, and acting herein by and through its duly authorized officers, hereinafter called "Declarant", is the owner of all that certain real property, including the land, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, located in CAPE ROYALE HARBOR POINT, San Jacinto County, Texas, more particularly described in Exhibit "A", attached hereto and incorporated herein by reference; and,

WHEREAS, Declarant hereby submits said real property to the regime established by the Condominium Act, Revised Civil Statutes of the State of Texas, Article 1501a; and,

WHEREAS, it is the intention and desire of Declarant to herein establish a plan of ownership for the condominium project, hereinafter called "Project"; said plan to consist of individual ownership of apartments and other areas as more particularly described upon the map or plat filed of even date herewith in the office of the County Clerk, San Jacinto County, Texas, file number _____, and incorporated herein by reference; and co-ownership of the remaining property, referred to hereinafter as the "Common Elements"; and,

WHEREAS, it is Declarant's intention to impose on said Project mutually beneficial restrictions for the benefit of all apartments and the owners thereof;

NOW, THEREFORE, Declarant hereby declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said

property and the division thereof into apartments, and all of which are established and agreed on for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project and every part thereof. All of the covenants, conditions, and restrictions shall run with the real property and shall be binding on all parties having or acquiring any right, title, or interest therein or any part thereof, and shall be for the benefit of each co-owner of said Project or any interest therein and shall inure to the benefit of and be binding on each successor in interest of the co-owners thereof.

ARTICLE I

DEFINITIONS

1.01. **Apartment.** "Apartment" shall mean an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors, the air space therein, the fee simple interest of same, and the corresponding undivided interest appurtenant thereto in the Common Elements and all easements appurtenant thereto, together with all fixtures, appliances and improvements contained therein or appurtenant thereto, the electrical wiring and connections servicing same to the point of connection to the Apartment's meter, all plumbing within the Apartment, all heating and air conditioning units, hot water heaters, ducts and piping serving the Apartment, whether or not contained within the Apartment boundary, but not including any structural components of any building within which the Apartment is located.

1.02. **Articles.** "Articles" shall mean the Articles of Incorporation of the Council which are or shall be filed in the Office of the Secretary of State of the State of Texas.

1.03. **Board.** "Board" shall mean the Board of Directors of the Council.

1.04. **Bylaws.** "Bylaws" shall mean the Bylaws of the Council and amendments thereto which are or shall be adopted by the Board.

1.05. **Common Elements.** "Common Elements" shall mean all elements of the Project which are subject to undivided co-ownership, that is, the entire Project except the separately owned Apartments.

1.06. Limited Common Elements. "Limited Common Elements" shall mean the common elements to be reserved for the use of a certain number of Apartments to the exclusion of the other Apartments, including those parking spaces, balconies and patios reserved for the exclusive use of one or more Apartments, such parking areas, patios, and balconies being shown on the plat filed of even date herewith wherein Apartment numbers are shown on such parking areas, patios, and balconies corresponding to the Apartment number or numbers for which such parking area, patio, or balcony is exclusively reserved, each Owner of an Apartment having an undivided percentage interest in such Limited Common Elements, as set forth in Paragraph 2.03 hereof.

1.07. General Common Elements. "General Common Elements" shall have the same meaning as in the Condominium Act, Article 1501a of the Revised Civil Statutes of Texas, and shall also mean all the Common Elements except the Limited Common Elements, and includes the land and improvements and buildings thereon, described in Exhibit "A"; all common utility lines, including sewerage, water, and electric wiring leading to the individual electrical meter servicing each Apartment, or servicing the common areas; the recreational facilities; the laundry rooms, waste facilities, utility rooms and storage rooms; drives, yards, shrubs, trees, walks, parking spaces not otherwise designated as Limited Common Elements; stairways, sidewalks, patios and balconies not otherwise designated as Limited Common Elements; pavement, foundation, structural walls, roof, exterior walls, dividing walls, floors and ceilings between two or more Apartments or Common Element, retaining walls; and all other areas of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, each Owner of an Apartment having an undivided percentage interest in such General Common Elements as set forth in Paragraph 2.03 hereof.

1.08. Condominium. "Condominium" shall mean the separate ownership of single units or apartments in a multiple unit structure or structures with common elements.

1.09. Co-Owner. "Co-Owner" or "Owner" shall mean any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, who or which owns an Apartment or Apartments within the Project.

1.10. Council. "Council" shall mean the CAPE ROYALE HARBOUR POINT CONDOMINIUM COUNCIL OF CO-OWNERS, INC., a corporation organized under the Texas Non-Profit Corporation Act for the management of the Project, the membership of which consists of all the Co-Owners within

the Project.

1.11. Council of Co-Owners. "Council of Co-Owners" shall mean all the co-owners within the Project.

1.12. Declarant. "Declarant" shall mean HOUSTON RESORT PROPERTIES, INC., its successors, and assigns.

1.13. Declaration. "Declaration" shall mean the within Declaration.

1.14. Governing Instruments. "Governing Instruments" shall mean the Declaration for the Project and the Articles and Bylaws of the Council.

1.15. MANAGER. "Manager" shall mean the person or corporation, if any, appointed by the Board to manage the Project.

1.16. Member. "Member" shall mean every person or entity entitled to membership in the Council as provided herein.

1.17. Person. "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

1.18. Project. "Project" shall mean the entire parcel or real property described in Exhibit "A" hereto, including the land, all improvements and structures thereon, and all easements, rights, and appurtenances thereto, which is divided or is to be divided into Apartments to be owned and operated as a Condominium.

1.19. RULES. "Rules" shall mean and refer to the Rules and Regulations for the Project adopted by the Council pursuant to Paragraph 3.06(b) of this Declaration.

ARTICLE 2

THE PROPERTY

2.01. Property Subject to Declaration. All the real property described in Exhibit "A" hereto, including the land, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto, shall be subject to this Declaration.

2.02. Exclusive Ownership and Possession. Each Co-Owner shall

be entitled to the exclusive ownership and possession of his Apartment. Any Apartment may be jointly or commonly owned by more than one person. The boundaries of the Apartment shall be and are the interior surfaces of the perimeter walls, floors, ceilings, and the exterior surfaces of balconies and terraces. A Co-Owner shall not be deemed to own the utilities running through his Apartment which are utilized for, or serve more than one Apartment, except as tenant in common with the other Co-Owners. A Co-Owner shall be deemed to own, and shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate, the interior surfaces of the walls, floors, ceilings, windows, and doors bounding his Apartment.

2.03. Common Elements. The Co-Owner, whether one or more, of each Apartment, shall be entitled to a one twenty-fifth (1/25th) undivided interest in the Common Elements. The percentage of the undivided interest of each Co-Owner of each Apartment in the Common Elements, shall have a permanent character and shall not be altered without the consent of all Co-Owners, expressed in an amended Declaration duly recorded, but subject to the right reserved by Declarant to expand the Project and alter the percentage of the undivided interest in the Common Elements, as set forth in Article 9.11 hereof. The percentage of the undivided interest in the Common Elements shall not be separated from the Apartment to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Co-Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching on the lawful rights of the other Co-Owners.

2.04. Limited Common Elements. The Common Elements designated as Limited Common Elements in the attached plat hereto are reserved for the exclusive use of the Co-Owners of the Apartments to which they are appurtenant.

2.05. Partition of Common Elements. The Common Elements, both General and Limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership so long as the Property remains a Condominium Project. In any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all mortgagees must be obtained.

2.06. Nonexclusive Easements. Each Co-Owner shall have a non-exclusive easement for use and enjoyment of the General Common Elements

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and for ingress, egress, and support over and through the General Common Elements. These easements shall be appurtenant to, and shall pass with the title to, each Apartment and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Council to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration, or easements reserved by Declarant herein.

2.07. Other Easements. The Council may grant to third parties easements in, on, and over the Common Elements for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Co-Owner, in accepting his deed to the Apartment, expressly consents to such easements.

2.08. Easements for Maintenance of Encroachments. None of the rights and obligations of the Co-Owners created herein, or by the deeds granting the Apartments, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of any Co-Owner if said encroachment occurred due to the willful conduct of said Co-Owner.

2.09. Easements and Right of Entry. There is hereby created a blanket easement on behalf of the Council, or its representatives, upon, across, over and under the land and buildings of the Project for the purposes of:

- (a) Performing necessary maintenance or repairs to the Common Elements for which the Council is responsible.
- (b) Abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in an Apartment.
- (c) Enforcing any provision of the Governing Instruments or any Rules promulgated thereunder.

2.10. Easement Reserved by Declarant. Declarant expressly excepts and reserves unto itself, its successors and assigns, an easement to the Project for the free and uninterrupted use, liberty and easement of passing in and along said easement, such easement to be used by Declarant, its successors and assigns in common with the Co-Owners, the Council and their heirs, successors and assigns.

ARTICLE 3

COUNCIL OF CO-OWNERS

3.01. Council. The Council of Co-Owners, organized as a non-profit corporation under the Texas Non-Profit Corporation Act, operating under the name of CAPE ROYALE HARBOUR POINT CONDOMINIUM COUNCIL of CO-OWNERS, INC., is charged with the duties and invested with the powers prescribed by law and set forth herein and in its Articles of Incorporation and Bylaws.

3.02. Membership. Membership in the Council is automatically granted to the Co-Owner or Co-Owners of each Apartment in the Project. On the transfer of title to any Apartment, the membership of the transferor automatically ceases and each new Co-Owner becomes a Member. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Apartment, and then only to the purchaser or beneficiary of such Owner's Apartment. A prohibited transfer is void, and will not be reflected upon the books and records of the Council. A Class A member who has sold his Apartment to a contract purchaser under an agreement to purchase shall be entitled to delegate to the contract purchaser his membership rights in the Council by written notice to the Secretary of the Council. However, the contract seller shall remain liable for all charges and assessments attributable to the Apartment until fee title to the Apartment is transferred.

3.03. Voting Rights. Voting shall be on a percentage basis. The Owner of each Apartment is entitled to a percentage of the total vote (except as hereafter stated) equal to the percentage interest which his Apartment bears to the entire Project. At any meeting of the Council, each Owner, except as provided in Article 3.04, shall be entitled to cast no more than one (1) vote for each Apartment owned. Where there is more than one record owner of an Apartment, all Co-Owners shall be entitled to be Members and may attend any meeting of the Council, but only one (1) of those Co-Owners shall be entitled to exercise the single vote to which the Apartment is entitled. Co-Owners owning the majority interests in an Apartment shall from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Apartment shall be exercised, if at all, as a unit. Where no voting Co-Owner is designated or if the designation has been revoked, the vote for the Apartment shall be exercised as the Co-Owners of the majority interests in the Apartment mutually agree. Unless the Board receives a written objection in advance from the Co-Owner, it shall be conclusively presumed that the corresponding voting Co-Owner is acting with the consent of his Co-Owners. No vote shall be cast for any Apartment if

the Co-Owners present in person or by proxy owning the majority interests in the Apartment cannot agree to said vote or other action. The non-voting Co-Owners shall nevertheless be responsible for all obligations imposed upon the jointly owned Apartment and shall be entitled to all other benefits of ownership. Cumulative voting shall not be allowed.

3.04. Classes of Membership. The Council shall have two (2) classes of voting membership.

Class A. Class A members shall originally be all Owners, except Declarant, for so long as there exists a Class B Membership. Class A members shall be entitled to one (1) vote for each Apartment owned by such member and subject to assessment. Declarant shall become a Class A member with regard to Apartments owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one person owns an Apartment, all of those persons shall be members, but voting shall be in accordance with Article 3.03 above, so that in no event shall more than one (1) Class A vote be cast for any Apartment.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Apartment owned and subject to assessment, provided that the Class B membership shall cease and be converted to Class A Membership upon the happening of any of the following events, whichever occurs first:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or,
- (b) When, in its sole discretion, Declarant so determines.

3.05. Membership Meetings. Meeting of the Members shall be called, held, and conducted in accordance with the requirements and procedures set forth in the Bylaws.

3.06. General Powers and Authority. The Council shall have all the powers of a non-profit corporation established under Texas law, subject only to the limitations contained in this Declaration and in the other Governing Instruments. The Council may perform all acts which may be necessary for, or incidental to, the performance of the obligations and duties imposed on it by this Declaration and the other Governing Instruments. The powers of the Council shall include, but are not limited to, the following:

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- (a) The power to establish, fix, and levy assessments against the Co-Owners in accordance with the procedures set forth in Article 4 of this Declaration and subject to the limitations therein.
- (b) The power to adopt, amend and revoke reasonable operating rules and regulations for use of the Common Elements, the Limited Common Elements, the Apartments and parking spaces, that are necessary and desirable in the judgment of the Council for the operation of the Project, and such rules and regulations shall be applicable as though set forth herein at length.
- (c) The right to institute and maintain actions for damages or to restrain any actual or threatened breach of any of the provisions of the Governing Instruments or Council Rules either in its own name and on its own behalf or on behalf of any consenting Co-Owner.
- (d) The right to discipline Members for violation of any of the provisions of the Governing Instruments or Council Rules by suspension of the violator's voting rights, privileges for use of the Common Elements, or by imposition of monetary penalties, subject to the following limitations:
 - (i) The accused Member must be given an opportunity to be heard with respect to the alleged violation.
 - (ii) Any suspension of privileges or imposition of monetary penalties shall be reasonably related to the Member's violation.
- (e) The power to delegate its authority, duties, and responsibilities, through the Board of Directors, to such committees, officers, or employees as are permitted to be retained under the Governing Instruments.
- (f) The right, through its agents or employees, to enter any Apartment when necessary in connection with any maintenance, landscaping, or construction for which the Council is responsible. Such entry shall be made with as little inconvenience to the Co-Owner as is practicable, and any damage caused thereby shall be repaired by the Council at its own expense.
- (g) Any other power provided by law or in the Governing Instruments.

3.07. Duties of the Council. In addition to the duties delegated to the Council or its agents and employees elsewhere in these Governing Instruments, the Council shall be responsible for the following:

- (a) Operation and maintenance of the Common Elements and the facilities located thereon. Such duty shall include, but shall not be limited to exterior painting, maintenance, repair, and landscaping of the Common Elements, and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.
- (b) Acquisition of, and payment from the maintenance fund for, the following:
- (i) Water, sewer, garbage, electrical, telephone, gas, and other necessary utility service for the Common Elements and, to the extent not separately metered and charged, for the Apartments;
 - (ii) A policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of the Apartments and Common Elements payable as provided in Article 6 herein, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear. All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Texas. All policies of insurance shall name as insureds the Council and each Owner in his percentage ownership interest; shall contain standard mortgage clause endorsements in favor of the mortgagee of each Apartment, if any, as their respective interests may appear; shall be without contribution with regard to any other policies of insurance carried individually by any Owner, whether such other insurance covers the Apartment owned by such Owner and/or the additions and improvements made by such Owner to his respective Apartment; shall provide that such policy not be terminated for non-payment of premiums or for any other cause without at least thirty (30) days prior written notice to the Council and at least ten (10) days prior written notice to the Mortgagee of each Apartment.
 - (iii) A policy or policies insuring the Board and the Co-Owners and/or Council of Co-Owners against any liability to the public or to the Co-Owners, their tenants and invitees, incident to the ownership and/or use of the Project, and including the personal liability exposure of the Co-Owners.

Limits of liability under such insurance shall be in such amounts as the Board deems necessary and desirable. Such limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement where the rights of named insureds under the policy or policies shall not be prejudiced as respects him, her, or their action against another named insured;

- (iv) Worker's compensation insurance to the extent necessary to comply with any applicable laws;
 - (v) The services of such personnel as the Board shall determine to be necessary or proper for the operation of the Common Elements;
 - (vi) Legal and accounting services necessary or proper in the operation of the Common Elements or the enforcement of this Declaration;
 - (vii) Such other insurance or bonds as the Board shall deem necessary or desirable.
- (c) Preparation and distribution, on a regular basis, of financial statements to the Members in accordance with the following:
- (i) A proforma operating statement for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.
 - (ii) A balance sheet, as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of an Apartment in the Project, and an operating statement for the period from the date of the first Apartment closing to said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of the Project Apartments and the names of the persons assessed.
 - (iii) A balance sheet as of the last day of the Council's fiscal year and an operating statement for said fiscal year shall be distributed within ninety (90) days after the close of the fiscal year.
- (d) Maintenance of the following books and records, such books and records to be kept in accordance with generally accepted accounting procedures:

- (i) Financial records with a detailed account of the receipts and expenditures affecting the Project and its administration and specifying the maintenance and regular expenses of the Common Elements and any other expenses incurred by or on behalf of the Project.
- (ii) Minutes of proceedings of Members, Board of Directors, and Committees having any authority of the Board of Directors.
- (iii) Record of the names and addresses of all Members with voting rights.
- (e) Arrangement for an annual independent audit of all books and records of the Council.
- (f) Any other duties provided by law or by the Governing Instruments.

3.08. Board of Directors. The affairs of the Council shall be managed, and its duties and obligations performed, by an elected Board of Directors. Provisions regulating the number, term, qualifications, manner of election, and conduct of meetings, of the members of the Board of Directors shall be set forth in the Bylaws of the Council.

3.09. Powers and Duties of the Board of Directors. The Board's powers and duties shall include, but shall not be limited to the following:

- (a) Enforcement of the applicable provisions of this Declaration, the Articles, Bylaws, and any Rules of the Council.
- (b) Payment of taxes and assessments which are, or could become a lien on the Common Elements or a portion thereof.
- (c) Contracting for casualty, liability, and other insurance on behalf of the Council.
- (d) Contracting for goods and services for the Common Elements, facilities, and interest of the Council.
- (e) Delegation of its powers to such committees, officers, or employees of the Council as are expressly authorized by the Governing Instruments.
- (f) Preparation of budgets and financial statements for the Council as prescribed in the Governing Instruments.
- (g) Formulation of rules of operation for the Common Elements and facilities owned or controlled by the Council.
- (h) Initiation and execution of disciplinary proceedings against Members of the Council for violations of provisions of the Governing Instruments in accordance with procedures set forth in the Governing Instruments.

- (i) Entering any Apartment as necessary in connection with construction, maintenance, or emergency repair for the benefit of the Common Elements or the Co-Owners in the aggregate.
- (j) Any other power provided by law or by the Governing Instruments.

3.10. Limitations on Powers of Board of Directors. Notwithstanding the powers set forth in Paragraph 3.08, above, the Board shall be prohibited from taking any of the following actions except with the approval of a majority of the voting power of the Council residing in the Members:

- (a) Entering into a contract with a third person wherein the third person will furnish goods or services for a term longer than one (1) year; a contract with a public utility if the rates charged are regulated by the Public Utility Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate; or prepaid casualty and/or liability insurance of not more than three (3) years duration, provided that the policy provides for short-rate cancellation by the insured.
- (b) Incurring aggregate expenditures for capital improvements to the Common Elements in any fiscal year in excess of twenty (20) per cent of the budgeted gross expenses of the Council for that fiscal year.
- (c) Selling during any fiscal year property of the Council having an aggregate fair market value in excess of ten (10) per cent of the budgeted gross expenses of the Council for that fiscal year.
- (d) Paying compensation to Directors or to Officers for the Council for services rendered in the conduct of the Council's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Council.

ARTICLE 4

ASSESSMENTS

4.01. Covenant to Pay. The Declarant covenants and agrees for each Apartment owned by it in the Project, and each Co-Owner by ac-

ceptance of the deed to such Co-Owner's Apartment is deemed to covenant and agree, to pay to the Council the regular and special assessments levied pursuant to the provisions of this Declaration. All moneys collected shall be put into a maintenance fund to be used to defray expenses attributable to the ownership, operation, and maintenance of common interests by the Council. The Co-Owner may not waive or otherwise escape liability for these assessments by non-use of the Common Elements or by abandonment of such Co-Owner's Apartment.

4.02. Assessments- Regular and special assessments shall be made in accordance with the following:

- (a) Regular Assessments- Within sixty (60) days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during such year, including a reasonable provision for contingencies and replacements with adjustments made for any expected income and surplus from the prior year's fund. Such estimated cash requirement shall be assessed to each Co-Owner according to the ratio of the number of Apartments owned by the Co-Owner assessed to the total number of Apartments in the Project subject to assessment. Each Co-Owner is obligated to pay assessments to the Board in monthly installments on or before the first day of each month.
- (b) Special Assessments- If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements on the Common Elements, or for any other reason, it shall make a special assessment for the additional amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments.

4.03. Limitations on Assessments- The Board may not, without the approval of a majority of the voting power of the Council residing in Members other than Declarant, impose a regular annual assessment per Apartment which is more than twenty-five (25) per cent greater than the regular annual assessment for the preceding year, nor levy special assessments which in the aggregate exceed fifteen (15) per cent of the budgeted gross expenses of the Council for that year. These limitations shall not apply to a special assessment levied against a Co-Owner to reimburse the Council for funds expended in order to bring the Co-Owner into compliance with the provisions of the Council's Governing Instrument.

4.04. Commencement of Assessments. Regular assessments shall commence upon the sale of the first Apartment in the Project.

4.05. Liability for Assessments. Each monthly portion of a regular assessment and each special assessment shall be a separate, distinct, and personal debt and obligation of the Co-Owner against whom the same are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent. Any Owner who owes delinquent assessments shall not be in good standing, and shall not exercise his voting privileges in the Council, shall lose the use of the Common Elements and all other benefits of membership until said delinquency is cured.

4.06. Payment of Assessments on Conveyance of Apartment. On the sale or conveyance of an Apartment, all unpaid assessments against a Co-Owner for his share in the expenses in which Paragraph 4.02 refers shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except for the following:

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

4.07. Assessment Lien. All sums assessed but unpaid chargeable to an Apartment shall constitute a lien on such Apartment superior to all other liens and encumbrances, except only for tax and special assessment liens on the Apartment in favor of any assessing agency, and sums unpaid on a bona fide first mortgage of record. The lien shall be a covenant running with the property, and to evidence such lien a vendor's lien shall be reserved in the deed from Declarant to each owner, and shall additionally be secured by a Deed of Trust executed by each Owner for the benefit of the Council. Such lien for the assessments shall be a continuing lien, running with the land and Apartment. Such lien may be enforced by the foreclosing of the liens against the defaulting Owner's Apartment by the Council as in other real property foreclosures. The defaulting Owners shall also be liable for all costs, expenses and attorney's fees incurred by the Council in the foreclosure. The Council shall have the right to bid at the foreclosure sale, and to acquire, lease, dispose of, and vote the votes of said Apartment so acquired by foreclosure.

4.08. Liability for Assessment upon Transfer. Upon the convey-

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ance of an-Apartment, the grantee shall be liable for all unpaid assessments unless the prior Owner shall have requested in writing from the Council, and paid a fee therefor, a written statement setting forth the amount of the unpaid assessments, if any, assessed to the subject Apartment, the amount of the current monthly assessments, and the amount of credit for any advance payments of assessments for prepaid items, but not including amounts for reserves or sinking funds, if any. Said written statement shall be conclusive upon the Council in favor of all persons who rely thereon in good faith. The Council shall also provide at no charge the statement to any mortgagee who requests same. Unless the Council provides such statement within ten (10) days from the date of written request, all unpaid assessments accrued prior to the request date shall be subordinate to the mortgagee's rights, and the grantee shall not be personally liable therefore, but the unpaid assessment shall remain as a lien on the Apartment.

ARTICLE 5

RESTRICTIONS AND COVENANTS

5.01. General Restrictions on Use. The right of a Co-Owner and his guests to occupy or use his Apartment, or to use the Common Elements or any of the facilities thereon, is subject to the following restrictions:

- (a) No Co-Owner shall occupy or use his Apartment or permit the same or any part thereof to be occupied or used for any other purpose than a private residence. Nothing in this Declaration shall prevent the Co-Owner from leasing or renting out his Apartment provided that it is not for transient or hotel purposes, is for a period of at least thirty (30) days, and is subject to the Council's Governing Instruments and Rules. No business or commercial activities shall be carried on in any Apartment.
- (b) There shall be no obstruction of the Common Elements. Nothing shall be stored in the Common Elements without the prior consent of the Board, except as hereinafter expressly provided, or in designated storage areas.
- (c) Nothing shall be done or kept in any Apartment or in the Common Elements which will increase the rate of insurance on the Common Elements without the prior written consent of the Board. No Co-Owner shall permit anything to be done or kept in his Apartment or in the Common Elements which will result in the cancellation of insurance on any Apartment or

on any part of the Common Elements or which would be in violation of any law. No waste shall be permitted in the Common Elements. No gasoline, kerosene, cleaning solvents, or other flammable liquids shall be stored in the Common Elements or in any Apartment, provided, however, that reasonable amounts in suitable containers may be stored in the storage spaces.

- (d) No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted on or in an Apartment or in the Common Elements, nor shall any unsightly material be used to cover windows in an Apartment (including aluminum foil or other mirrored or reflective material); nor shall any Apartment or the Common Elements be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Apartment or resident thereof. Declarant, however shall have the sole right to erect identifying or advertising signs.
- (e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Apartment or in the Common Elements, including dogs, cats, or other household pets, subject to the Rules and Regulations adopted by the Board.
- (f) No noxious or offensive activity shall be carried on in any Apartment or in the Common Elements, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Co-Owners.
- (g) Nothing shall be altered or constructed in or removed from the Common Elements, except on the written consent of the Board. No planting or gardening shall be done in the Common Elements, and no fences, hedges or walls shall be erected or maintained upon the Project except such as are installed by Declarant or approved in writing by the Board.
- (h) There shall be no violation of the Rules for the use of the Common Elements, adopted by the Board and furnished in writing to the Co-Owners, and the Board is authorized to adopt such Rules.
- (i) No Owner shall install, attach or hang or allow to be installed, attached or hung any equipment or wiring or electrical installations, television or radio transmitting or receiving antennas, air conditioning units or any other like equipment or wiring in or across any portion of the Common Elements, protruding from any balcony or through any wall, floor, ceiling, window or door which is a Common Element,

except as approved by the Board. All radios, televisions, electrical equipment or appliances and the wiring thereof installed or used in an Apartment shall fully comply with all rules, regulations and requirements of all State and local authorities.

- (j) No Owner shall park any automobile or other motor vehicle in the Common Element except in a space designated for the Owner by the Board. No parking space shall, without written consent of the Board, be used for the storage of boats, trailers, campers, unused or inoperable vehicles or any other items which the Board deems unsightly.

5.02. Maintenance. Except for those portions which the Council is required to maintain and repair, each Co-Owner shall, at his sole cost and expense, maintain and repair his Apartment, keeping the same in good repair and condition. Each Co-Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced, and restored, at his sole expense, all portions of his Apartment, including the windows and the interior surfaces of the walls, ceilings, floors, doors and permanent fixtures, in a clean, sanitary and attractive condition, in accordance with the original construction design of the Project. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Apartments shall be pierced or otherwise altered or repaired, without the prior written consent of the Board. It shall further be the duty of each Co-Owner, at his sole expense, to keep free from debris and in a good state of repair, the Limited Common Elements appertenant to each Co-Owner's Apartment. However, no Owner shall be responsible for the periodic structural repair, resurfacing, replacement or painting of his Limited Common Elements, so long as the painting, repair or replacement is not caused by the willful or negligent acts of the Co-Owner or his family or guests. It shall further be the duty of each Co-Owner to pay when due any and all charges for all utility services which are metered to his Apartment. Each Co-Owner shall be responsible for maintaining those portions of any heating and cooling systems and equipment, water heaters and other appliances and utilities which are located within or which exclusively serve his Apartment. Each Co-Owner shall also be responsible for damages or repairs to any central water, sewer or electrical systems serving the Project, or damages to his own Apartment, due to causes originating within the Co-Owner's Apartment.

5.03. Damage Liability. Each Co-Owner shall be liable to the Council for all damage to the Common Elements or other Council property

that is sustained by reason of the negligence or willful misconduct of that Co-Owner, his family, guest, or tenants.

5.04. Exemption. Declarant shall be exempt from the restrictions of Article 5.01 to the extent necessary for sales or additions to the Project. Such exemption includes, but is not limited to, maintaining Apartments as model homes, placing advertising signs on Project property, and generally making such use of the Project lots and Common Elements as is necessary to carry on sales or related activity.

ARTICLE 6

DAMAGE OR DESTRUCTION

6.01. Application of Insurance Proceeds. If the Project is damaged by fire or any other disaster, the insurance proceeds, except as provided hereafter, shall be applied to reconstruct the Project. Reconstruction shall not be compulsory if it comprises the whole or more than two-thirds (2/3) of the building as determined by the Council. In such cases and unless otherwise unanimously agreed to by the Co-Owners, the proceeds shall be delivered pro rata to the Co-Owners or their mortgagees, as their interest may appear, entitled to it in accordance with the percentages or fractions set forth in Article 2.03 of this Declaration, and the condominium Regime established hereby shall terminate. Upon termination, the Project shall be deemed to be regrouped and merged into a single estate owned in undivided interests by all Owners as tenants-in-common in the percentages previously owned by each Owner.

6.02. Insufficient Insurance Proceeds. When the insurance proceeds are insufficient to cover the cost of reconstruction and reconstruction is required by Paragraph 6.01, above, the costs in excess of the insurance proceeds shall be paid by all the Co-Owners directly affected by the damage, in proportion to the percentages or fractions assigned to their respective Apartments. If any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the Co-Owners benefited thereby, on proper resolution setting forth the circumstances of the case and the cost of the work, and a Special Assessment made therefor. Such Special Assessment shall not require the consent of the Council, notwithstanding any provision herein to the contrary. If any Owner fails to pay the Special Assessment, the Board may make up the deficiency by payment from the common assessment fund, which shall in no way release the non-paying Owner from liability

therefor. The provisions of this Paragraph may be changed by unanimous resolution of the parties concerned adopted subsequent to the date on which the fire or other disaster occurs.

6.05. Obtaining Bids for Reconstruction. The Board shall obtain firm bids, including the obligation to obtain a performance bond, from two or more responsible contractors to rebuild the Project in accordance with its original plans and specifications and shall, as soon as possible thereafter, call a special meeting of the Co-Owners to consider such bids. If the Board fails to do so within sixty (60) days after the casualty occurs, any Co-Owner may obtain such bids and call and conduct such meeting as herein provided. At such meeting, the Co-Owners may, by sixty-six and two-thirds (66 2/3) per cent vote, elect to reject all of such bids, or by fifty-one (51) per cent vote, elect to reject all such bids requiring amounts more than one thousand dollars (\$1,000.00) in excess of available insurance proceeds. If all bids are rejected, the Board shall obtain additional bids for presentation to the Co-Owners. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable.

ARTICLE 7

CONDEMNATION

7.01. General Provisions. 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 (whether permanent or temporary) the Board and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Board shall give notice of the existence of such proceedings to all Owners and to all mortgagees known to the Board to have an interest in any Apartment. The expense of participation in such proceedings by the Board shall be borne by the Common Expense Fund. The Board is specifically authorized to obtain and pay for such assistance from attorney, appraisers, architects, engineers, expert witnesses and other persons as the Board, in its discretion, deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board, acting as Trustee, and such damages or awards shall be applied or paid as provided therein.

7.02. Taking of Common Elements. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Apartment), the Board, in addition to the general powers set forth herein, shall have the sole

authority to determine whether to defend or resist any such proceedings, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking of such Common Elements only, 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 such taking are determined, such damages or awards shall be paid to each Owner in proportion to his percentage ownership interest in Common Elements. The Board may, if it deems advisable, call a meeting of the Owners, at which meeting the Owners, by a majority vote shall decide whether to replace or restore, as far as possible, the Common Elements so taken or damaged. In the event it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the map attached hereto shall be duly amended by instrument executed by the Board on behalf of the Owners.

7.03. Taking of Apartments. In the event that such eminent domain proceedings results in the taking of or damage to one or more, but less than two-thirds (2/3 rds) of the total number of Apartments, then the damages and awards for such taking shall be determined for each Apartment and the following shall apply:

- (a) The Board shall determine which of the Apartments damaged by such taking may be made tenantable for the purposes set forth in this Declaration, taking into account the nature of the Project and the reduced size of each Apartment so damaged.
- (b) The Board shall determine whether it is reasonably practicable to operate the remaining Apartments of the Project, including those damaged Apartments which may be made tenantable, as a condominium in the manner provided in this Declaration.
- (c) In the event that the Board determines that it is not reasonably practicable to operate the undamaged Apartments and the damaged Apartments which can be made tenantable as a condominium, then the Project shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all Owners, as tenants-in-common, in the percentage ownership interests previously owned by each Owner in the Common Elements.
- (d) In the event that the Board determines that it will be reasonably practicable to operate the undamaged Apartments and the damaged Apartments which can be made tenantable as a condominium, the damages and awards made with respect to

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each Apartment which has been determined to be capable of being made tenatable shall be applied to repair and reconstruct such Apartment so that it is made tenatable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of those Apartments which are being repaired or reconstructed so as to be made tenatable. With respect to those Apartments which may not be made tenatable, the award made with respect to such Apartment shall be paid to the Owner of such Apartment or his mortgagee or mortgagees, as their interests may appear, and the remaining portion of such Apartments, if any, shall become a part of the Common Elements and repair and use of such Apartments shall be determined by the Board. Upon the payment of such award for the account of such Owner as provided herein, such Apartment shall no longer be a part of the Project and the percentage ownership interests in the Common Elements appurtenant to each remaining Apartment which shall continue as part of the Project shall be equitably adjusted to distribute the ownership of the undivided interests in the Common Elements among the reduced number of Owners.

If the entire Project is taken, or two-thirds (2/3 rds) or more of the Apartments are taken or damaged by such taking, all damages and awards shall be paid to the accounts of the Owners of Apartments, as provided herein, in proportion to their percentage ownership interests in the Common Elements and this Condominium Regime shall terminate upon such payment. Upon such termination, the Apartments and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interests by all Owners as tenants-in-common in the percentage ownership interest previously owned by each Owner in the Common Elements.

7.04. PAYMENT OF AWARDS AND DAMAGES- Any damages or awards provided in this Article to be paid to or for the account of any Owner by the Board, acting as Trustee, shall be applied first to the payment of all taxes or assessments by governmental authorities past due and unpaid with respect to that Apartment; secondly, to amounts due under any mortgage instruments duly recorded; thirdly, to the payment of any assessments or Special Assessments charged to or made against the Apartment and unpaid; and finally to the Owner of such Apartment.

ARTICLE 8

RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUST

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- 8.01. Rights of Mortgages.** Declarant hereby warrants that beneficiaries under deeds of trust to Apartments in the Project shall be entitled to the following rights and guarantees:
- (a) A beneficiary under a first lien deed of trust, on its written request, will be entitled to written notification from the Council of any default in the performance by the grantor of any obligation under the Council's Governing Instruments which is not cured within sixty (60) days.
 - (b) Any beneficiary under a first lien deed of trust who obtains title to an Apartment pursuant to the remedies provided in the deed of trust will not be liable for such Apartment's assessments which accrue prior to the acquisition of title to said Apartment by the beneficiary.
 - (c) Unless at least two-thirds (2/3 rds) of the beneficiaries under first lien deed of trust (based on one vote for each first lien deed of trust owned), have given their prior written approval, the Council shall not be entitled to:
 - (i) By act or omission, seek to abandon or terminate the Project;
 - (ii) Change, subject to Article 9.11 hereof, the pro rata interest or obligations of any individual Apartment for the purposes of:
 - (A) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards;
 - (B) Determining the pro rata share of ownership of each Apartment in the Common Elements and the improvements thereon.
 - (iii) Partition or subdivide any Apartment;
 - (iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements for utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause);
 - (v) Use hazard insurance proceeds for losses to any Project property (whether to Apartments or to the Common Elements) for other than the repair, replacement, or reconstruction of such property, except as provided by statute in case of substantial loss to the Apartment and/or Common Elements of the Project.
 - (d) All taxes, assessments, and charges which may become liens prior to the first mortgage under local law, shall relate only to the individual Apartments and not to the Project as a whole.

- (e) No provision of the Governing Instruments of the Council gives any Co-Owner, or any other party, priority over any rights of the beneficiary under a first deed of trust to the Apartment pursuant to its deed of trust in the case of a distribution to such Co-Owner of insurance proceeds or condemnation awards for losses to or taking of Apartments and/or the Common Elements or portions thereof.
- (f) Council assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis.

ARTICLE 9

GENERAL PROVISIONS

9.01. Amendment. This Declaration may be amended by the vote or written consent of Members representing no less than fifty-one (51) per cent of the voting power of the Council. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

9.02. Nonwaiver of Remedies. Each remedy provided in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver thereof.

9.03. Severability. The provisions of this Declaration shall be deemed independent and severable, and in invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

9.04. Binding. This Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding on the Declarant and the Co-Owners and their heirs, grantees, tenants, successors, and assigns.

9.05. Interpretation. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other

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provision hereof.

9.06. Limitation of Liability. The liability of any Co-Owner for performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of said Co-Owner's entire interest in his Apartment with respect to obligations arising from and after the date of such divestment.

9.07. Fair Housing. Neither Declarant nor any Co-Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of this Apartment to any person on the basis of race, color, sex, religion, ancestry, or national origin.

9.08. Individual Insurance. Each Owner shall be responsible for insurance on the contents of his Apartment and the furnishings, interior walls and wall coverings, appliances and all parts of the Apartment not Common Elements, and personal property therein and all personal property (including automobiles) parked or stored in the Owner's assigned parking space. All policies of casualty insurance carried by each Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Council for the benefit of all of the Owners as above provided. Owners may carry individual policies of liability insurance insuring against the liability of such Owners, at their own cost and expense.

9.09. Number, Gender, and Headings. As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part hereof, and shall not affect the interpretation of any provision.

9.10. Indemnification. The Council shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or Director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been an officer or Director. The officers and Directors shall not be liable for any mistake of judgment, negligent, or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Council (except to the extent

that such officers or directors may also be members of the Council), and the Council shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer of Director, or former officer or Director, may be entitled. The Council shall, as a common expense, maintain adequate general liability and officers' and Directors' liability insurance to fund this obligation.

9.11. Reservation to Expand Project. Notwithstanding anything contained herein to the contrary, Declarant hereby expressly reserves the right to expand, at any time hereafter, upon prior notice to all Owners and their mortgagees, the Project and to record an Amendment to this Declaration to properly reflect such expansion and to adjust the percentage ownership of Owners in the Common Elements. Declarant also reserves the right to grant and create such easements and right-of-way as may be necessary to expand and develop adjoining property, and to establish easements, reservations, restrictions and exceptions in connection therewith, consistent with the Project.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 10th day of February, 1984.

OWNER:
HOUSTON RESORT PROPERTIES, INC.

ATTEST:

Judy Boswell
JUDY BOSWELL, SECRETARY

D. A. Van Velzer
D. A. VAN VELZER, PRESIDENT

THE STATE OF TEXAS :
COUNTY OF SAN JACINTO :

This instrument was acknowledged before me on the 10th day of February, 1984, by D. A. VAN VELZER, President, and JUDY BOSWELL, Secretary, of HOUSTON RESORT PROPERTIES, INC., a Texas Corporation, on behalf of said Corporation.

My Commission Expires:
June 1, 1984

James D. [Signature]
Notary Public, State of Texas

LIENHOLDER:
SAM HOUSTON NATIONAL BANK OF WALKER CO.
3012 11TH STREET
HUNTSVILLE, TEXAS 77340

ATTEST:
[Signature]

[Signature]
ROBERT M. TAVENNER, VICE PRESIDENT

THE STATE OF TEXAS
COUNTY OF WALKER

This instrument was acknowledged before me on the 27th day of JANUARY, 1984, by ROBERT M. TAVENNER, Vice President, and [Signature], of SAM HOUSTON NATIONAL BANK, on behalf of said Bank.

My Commission Expires:
5-24-85

[Signature]
Notary Public, State of Texas
Linda Solomon

EXHIBIT "A"
3.4864 ACRE TRACT OF LAND
IN NARROW POINT AREA
DRURY MCGEE SURVEY, A-28
SAN JACINTO COUNTY, TEXAS

Being 3.4864 acres of land situated in the State of Texas, County of San Jacinto, a part of the Drury McGee Survey, A-28, and being out of the lands titled to Mitchell & Mitchell Land Development Company by deed dated January 10, 1968 and recorded in Volume 107, page 489 of the San Jacinto County Deed Records. Said 3.4864 acre tract being more particularly described as follows:

BEGINNING at the common corner of Lots 7 and 8, Section 4, Villas De Marina Subdivision, Cape Royale as recorded in Volume 5, page 19, of the Deed Records, San Jacinto County, Texas. Said common corner being the most easterly corner of Lot 7 and the most northerly corner of Lot 8 located in the northeasterly boundary line of said Section 4;

THENCE leaving said boundary line of Section 4 and severing said Mitchell & Mitchell Land Development Company Property, N 45° 46' 38" E, 150.00 feet to a point for corner;

THENCE S 40° 13' 22" E, 125.44 feet to an angle point;

THENCE S 86° 42' 44" E, 179.77 feet to a point for corner;

THENCE S 05° 58' 56" E, 403.31 feet to a point for corner, said point being located on the Trinity River Authority Lake Livingston Fee Taking Line as shown on the City of Houston, Texas, Livingston Reservoir Drawing No. B-30-130;

THENCE along said Fee Taking Line S 61° 42' 00" W, 58.25 feet to an angle point, said point being No. 30 of Parcel "A" as shown on aforementioned Drawing No. B-30-130;

THENCE N 86° 32' 00" W, 341.75 feet to a point for corner;

THENCE leaving said Fee Taking Line N 05° 28' 00" E, 35.85 feet to a point of curvature on the aforementioned Section 4, Villas De Marina boundary;

THENCE along said Boundary and curve to the left a distance of 147.95 feet, having a radius of 480.00 feet and a central angle of 17° 39' 37" with a chord bearing N 20° 18' 15" E, 147.36 feet to a point of compound curvature;

THENCE along said curve to the left a distance of 270.67 feet, having a radius of 310.00 feet and a central angle of 50° 01' 33" with a chord bearing N 13° 32' 14" W, 262.15 feet to the POINT OF BEGINNING and containing 3.4864 acres of land.