

d. The right and duty of the Association to suspend the voting rights and the right to the use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Condominium Unit remains unpaid;

e. The right of Declarant or the Association after the Declarant Control Period to dedicate or transfer all or any part of the Common Area for utility easements to any public agency, authority or utility for the purposes, and subject to the conditions, of such agency, authority or utility. No such dedication or transfer shall be effective unless approved by all First Mortgagees and two-thirds (2/3) vote of the quorum of Owners present at a meeting of the Association specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Directors reflecting such vote of the Owners agreeing to such dedication or transfer and First Mortgagee approval has been duly recorded in the Condominium Records of Brazos County, Texas;

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

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

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

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

#### 4.5 MEMBERSHIP, VOTING, QUORUM, PROXIES.

a. Membership. Any person on becoming an Owner of a Condominium Unit shall automatically become a Member of the

Association. Such membership shall terminate without any formal Association action whenever such person ceases to own a Condominium Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with CRIPPLE CREEK CONDOMINIUMS during the period of such ownership and membership of the Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Board of Directors may, if it so elects, issue one (1) membership card to the Owner(s) of a Condominium Unit. Such membership card shall be surrendered to the Secretary whenever ownership of the Condominium Unit designated thereon shall terminate.

b. Voting. Unit ownership shall entitle the Owner(s) to cast one (1) vote per Unit in the affairs of the Association, which vote will be weighted to equal the proportionate share of ownership of the Unit Owner in the Common Elements. Voting shall not be split among more than one (1) Unit Owner. The present number of votes that can be cast by the Unit Owners is one hundred fifty-six (156). The combined weighted votes calculated in accordance with Exhibit "C" shall equal one hundred percent (100%).

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

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

#### 4.6 INSURANCE.

a. The Association shall obtain and maintain at all times insurance of the type and kind provided hereinafter, including such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to any Condominium Buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. The

insurance shall be carried in blanket policy form naming the Association and all Mortgagees as the insured. In addition, each policy or policies shall identify the interest of each Condominium Unit Owner and shall provide for a standard, noncontributory mortgage clause in favor of each First Mortgagee. Further, the policy shall insure against loss or damage by fire, vandalism, malicious mischief or such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements and the Units, and against such other hazards and for such amounts as the Board may deem advisable. Each Owner irrevocably designates the Owners Association, as Attorney In Fact, to administer and distribute such proceeds as is elsewhere provided in this Declaration. Such insurance policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after thirty (30) days prior written notice to each First Mortgagee and the Association. The Board of Directors shall, upon request of any First Mortgagee, furnish a certified copy of each blanket policy and a separate certificate identifying the interest of the Mortgagor.

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

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

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

e. The Association shall obtain fidelity bond coverage as provided in Paragraph 5.12 of the By-Laws.

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

#### ARTICLE V

##### MAINTENANCE ASSESSMENTS

5.1 ASSESSMENTS FOR COMMON EXPENSES. All Owners shall be obligated to pay the assessments imposed by the Association to meet the Common Expenses. Assessments for the estimated Common Expenses shall be due monthly in advance

on or before the first day of each month. Failure to pay by the fifteenth (15th) day of each month shall require the imposition and assessment of a late charge to be set by the Board of Directors in the Rules and Regulations of the Association. Contribution for monthly assessments shall be prorated if the ownership of a Condominium Unit commences on a day other than the first day of the month.

5.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, welfare and recreation of the residents in the Property, and in particular for the improvement, maintenance and preservation of the Property, the services and the facilities devoted to said purposes that are related to the use and enjoyment of both the Common Elements and the Units situated upon the Property. Such uses may include, but are not limited to, the cost to the Association of the following: all insurance, repair, replacement and maintenance of the Common Elements; fire, extended coverage, vandalism, malicious mischief and liability insurance for the Condominium Units; management costs, taxes, legal and accounting fees as may from time to time be authorized by the Association; construction of other facilities; maintenance of easements upon, constituting a part of, appurtenant to or for the benefit of the Property; mowing grass, caring for the grounds and landscaping; caring for the tennis courts, swimming pool and equipment, laundry room, and storage space; roofs and exterior surfaces of all Buildings; garbage pickup; pest control; street maintenance; outdoor lighting; security service for the Property; water and sewer service furnished to the Property by or through the Association; discharge of any liens on the Common Elements; and other charges required by this Condominium Declaration, or other charges that the Association is authorized to incur. In addition, the Association shall establish a reserve for repair, maintenance and other charges as specified herein.

5.3 DETERMINATION OF ASSESSMENTS. The assessments shall be determined by the Board of Directors based upon the cash requirements necessary to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements. This determination may include, among other items, taxes, governmental assessments, landscaping and grounds care, Common Area lighting, repairs and renovation, garbage collections, wages, water charges, legal and accounting fees, management costs

and fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, expenses incurred in the operation and maintenance of recreation and administrative facilities, payment of any deficit remaining from a previous period and the creation of a reserve contingency fund. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from the obligation to pay.

5.4 INITIAL ASSESSMENT AND MAXIMUM MONTHLY ASSESSMENT.

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

b. At least thirty (30) days prior to January 1st, the Board of Directors shall determine the annual budget for the Association and shall set the monthly assessment for the next succeeding twelve (12)-month period. Said monthly assessment shall not exceed one hundred twenty percent (120%) of the monthly assessment allowed for January of the preceding year. At any time during the calendar year, the Board shall have a right to adjust the monthly assessments, as long as any such adjustment does not exceed the maximum permitted herein, with thirty (30) days' written notice given to each Owner. Written notice of the monthly assessment adjustment shall be sent to every Owner subject thereto. The due date shall be established by the Board, and unless otherwise provided or unless otherwise agreed by the Association, the Board shall collect the assessments monthly in accordance with Paragraph 5.1 hereof. If the Board determines at any time during the calendar year that a greater increase of the monthly assessment is required to adequately perform the duties and responsibilities of the Association and pay all expenses thereof, then the Board may call a special meeting of the Owners. By the assent of a two-thirds (2/3) vote of the quorum of Owners, present at such meeting, the monthly assessment may be set at whatever level such Owners approve. The new assessment shall become the basis for future annual increases, using the one hundred twenty percent (120%) formula, as above outlined.

c. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined.

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

5.5 SPECIAL ASSESSMENTS FOR IMPROVEMENTS. In addition to the annual assessments authorized above, the Association, through the Board of Directors, may levy at any time during the calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual budget, contingency or reserve funds, including the cost of construction or reconstruction, repair or replacement of the Common Elements, as well as the necessary fixtures and personal property related thereto. Any such assessment must be approved by a two-thirds (2/3) vote of the quorum of Owners voting in person or by proxy at a meeting duly called for this purpose. The Declarant will be treated as all other Unit Owners for purposes of special assessments. Said special assessments shall be assessed against each Owner in proportion to his Unit's ownership interest in the Common Elements as set forth herein.

5.6 COMMENCEMENT OF ASSESSMENTS. The monthly assessments provided for herein shall be due on the first day of the month. The assessments shall be prorated if the ownership of a Unit commences on a day other than the first day of the month. On Units owned by the Declarant, the assessment shall commence on the first day of the month after the Declarant Control Period is terminated, in accordance with Paragraph 5.11 herein.

5.7 NO EXEMPTION. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements or by abandonment of his Unit.

5.8 LIEN FOR ASSESSMENTS.

a. All common monthly assessments and special assessments assessed but unpaid by a Unit Owner for its share of Common Expenses chargeable to its respective Condominium Unit, including interest thereon at ten percent (10%) per annum, plus any Attorney's fees incurred by the Association in order to enforce compliance by any Owner with the terms of this Declaration, the By-Laws, Articles of

Incorporation, or Rules and Regulations of the Association, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances, except only for:

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

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

b. To evidence such lien the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such notice shall be signed by one (1) of the Board of Directors and may be recorded in the Office of the Clerk and Recorder of Brazos County, Texas. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association. Any such foreclosure sale is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Texas Property Code, as amended by Acts 1983, 68th Leg., Ch. 915 (Sec. 3810 Revised Civil Statutes), or in any manner permitted by law. Each Owner, by accepting a deed to his Unit, expressly grants to the Association a power of sale, as set forth in said Section 51.002, in connection with the assessment lien. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Condominium Unit during the period of foreclosure, that being the point in time after the foreclosure is posted, and the Association shall be entitled to a receiver to collect same. The Association shall have the power to bid in the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

c. The amount of the Common Expenses assessed against each Condominium Unit shall also be a debt of the Owner thereof at the

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

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

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

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

5.10 STATEMENT OF ASSESSMENTS. Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Condominium Unit, the Association, by its Board of Directors, shall issue a written statement setting forth the unpaid assessments, if any, with respect to the subject

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

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

5.11 OBLIGATION OF DECLARANT FOR ASSESSMENTS AND MAINTENANCE. During the Declarant Control Period, as provided in Paragraph 4.2 hereof, the Declarant shall be responsible for the difference between the cost of maintenance and assessments received from the other Unit Owners and shall not be limited to the regular monthly assessments for Units owned by Declarant until the end of the Declarant Control Period or until Declarant, at its option, chooses to make regular monthly payments, whichever first occurs. Should Declarant elect not to make regular monthly assessments, Declarant shall provide any additional funds necessary to pay actual cash outlays required to fund current operating expenses of the Association. After the Declarant Control Period is terminated or earlier at Declarant's option, Declarant shall pay the regular

monthly assessment for each Unit or Units it owns. In no event shall Declarant's liability for assessments be less than required by the Act.

#### ARTICLE VI

##### DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS

###### 6.1 DESTRUCTION OR OBSOLESCENCE.

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

b. Repair and reconstruction of the improvement(s), as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in existence prior to the damage, with each Unit and Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements, unless all of the Owners and all of the First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter:

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

reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

(2) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-six and two-thirds percent (66-2/3%) of all the Common Elements as determined by a majority of the Unit Owners, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as Attorney In Fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Such deficiency assessment shall be a special assessment made pro rata according to each Owner's proportionate interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article V hereof. The lien provided for herein shall be subordinate to any recorded first mortgage lien, as provided in Paragraph 5.9 of this Declaration. Should the Association choose to foreclose said lien, as provided in Article V, the proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as Attorney In Fact, in the following order:

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

(b) For payment of the balance of the lien of any duly recorded mortgage instrument;

(c) For payment of unpaid Common Expenses;

(d) For payment of junior liens and encumbrances in the order and extent of their priority; and

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

(3) If more than sixty-six and two-thirds percent (66-2/3%) of all of the Common Elements as determined by a majority of Unit Owners, not including land, are destroyed or damaged, and if the Owners representing the aggregate ownership of one hundred percent (100%) of the Common Elements, do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, the entire remaining Premises shall be sold by the Association, as Attorney In Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Unit Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into separate accounts, one such account for each Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney In Fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any one (1) account to another, toward the full payment of the lien of any first mortgage against the Condominium Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire Property. Such apportionment shall be based upon each Condominium Unit Owner's proportionate interest

in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one (1) account to another, by the Association, as Attorney In Fact, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof. Any decision to terminate the condominium status as herein provided must have the approval of First Mortgagees as provided in Paragraph 8.1c herein.

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

(5) The Owners representing an aggregate ownership interest of sixty-six and two-thirds percent (66-2/3%) of the Common Elements or more, may agree that the Common Elements of the Property are obsolete and that the same should be renewed or reconstructed. In such instance, the

expenses thereof shall be payable by all of the Owners as Common Expenses.

(6) Any restoration, reconstruction or repair of the Project shall be performed substantially in accordance with this Declaration and the original Plans and specifications, unless other action is approved by the holders of mortgages on Units which have at least fifty-one percent (51%) of the votes of the Association.

(7) The Owners representing an aggregate ownership interest of one hundred percent (100%) of the Common Elements and all holders of first mortgages may agree that the Common Elements of the Property are obsolete and that the same should be sold. In such instance, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's authorized officers, the entire Premises shall be sold by the Association, as Attorney In Fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the By-Laws. The sales proceeds shall be apportioned between the Owners and First Mortgagees as their interests may appear on the basis of each Owner's percentage or fraction of interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, one such account for each Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney In Fact, shall use and disburse the total amount of each of such funds, without contribution from (1) fund to another, for the same purposes and in the same order as is provided in Subparagraphs b(2)(a) through (e) of Paragraph 6.1 hereof.

6.2 JUDICIAL PARTITION. There shall be no judicial partition of the Common Elements, nor shall Declarant or any person acquiring any interest in the Project or any part thereof seek any such judicial partition, until the

happening of the conditions set forth in Paragraph 6.1 hereof in the case of damage or destruction or unless the Property has been removed from the provisions of the Texas Condominium Act; provided, however, that if any Condominium Unit shall be owned by two (2) or more co-tenants, as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition between such co-tenants, but such partition shall not affect any other Condominium Unit.

6.3 CONDEMNATION.

a. If all or any part of the Property is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association, as Attorney In Fact, and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all First Mortgagees known to the Association to have an interest in any Condominium Unit. The expense of participation in such proceedings by the Association shall be borne by the Common Fund. The Association, as Attorney In Fact, is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association, as Attorney In Fact, and such damages or awards shall be applied as provided herein. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Condominium Unit), the Association, as Attorney In Fact, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such Property to the condemning authority in lieu of such condemnation proceeding.

b. With respect to any such taking, all damages and awards shall be determined for the taking of the individual Units and for the taking of the Common Elements and for each Owner's interest therein. After the damages or awards for such taking are

determined, such damages or awards shall be paid to the account of each Owner for the loss of the individual Unit plus an amount in proportion to his percentage or fractional ownership interest in the Common Elements to be applied or paid as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof, unless restoration takes place as herein provided. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the 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 Association, as Attorney In Fact, on behalf of the Owners. In the event that such eminent domain proceeding results in the taking of or damage to one (1) or more, but less than sixty-six and two-thirds percent (66-2/3%) of the total number of Condominium Units, then the damages and awards for such taking shall be determined for each Condominium Unit and the following shall apply:

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

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

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

(4) In the event that the Association determines it will be reasonably practicable to operate the undamaged Condominium Units and the damaged Units which can be made tenantable as a Condominium Unit, then the damages and awards made with respect to each Unit which has been determined to be capable of being made tenantable shall be applied to repair and to reconstruct such Condominium Unit so that it is made tenantable. The restoration shall be performed in accordance with this Declaration and the original Plans and specifications, unless other action is approved by holders of mortgages on the remaining Units which have at least fifty-one percent (51%) of the votes in the Association. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against those Condominium Units which are tenantable. With respect to those Units which may not be tenantable, the award made shall be paid as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof; 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 Condominium Unit shall no longer be a part of the Condominium Project, and the proportionate ownership interest in the Common Elements appurtenant to each remaining Condominium Unit which shall continue as part of the Condominium Project shall be equitably adjusted to distribute the ownership of the undivided interest in the Common Elements among the reduced number of Owners based upon the square footage of the individual remaining Units in proportion to the total square footage of all the remaining Units.

(5) If sixty-six and two-thirds percent (66-2/3%) or more of the Condominium Units are taken or damaged by such taking, all damages and awards shall be paid to the accounts of the Owners of Units, as provided herein; and this Condominium Regime shall terminate upon such

payment. Such termination of condominium status shall require the approval of the Mortgagees as provided in Paragraph 6.1C herein. Upon such termination, the Condominium Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Owners as tenants in common in the proportionate ownership interest previously owned by each Owner in the Common Elements. The Owners representing an aggregate ownership interest of sixty-seven percent (67%) of the Common Elements and holders of first mortgages on Units which have at least sixty-seven percent (67%) of the votes on Units subject to first mortgages may agree that the Property should be sold. In such instance, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's authorized officers, the entire Premises shall be sold by the Association, as Attorney in Fact, for all of the Owners, free and clear of the provisions contained in the Declaration, the Plat and the By-Laws. The sales proceeds shall be apportioned between the Owners and First Mortgagees as their interests may appear on the basis of each Owner's proportionate ownership interest in the regrouped estate. Any damages, awards, or sales proceeds provided in this paragraph to be paid to or for the account of any Owner by the Association shall be applied as set forth in Subparagraphs 6.1b(2)(a) through (e) hereof.

#### ARTICLE VII

##### PROTECTION OF MORTGAGEE

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

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

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

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

7.5 ANNUAL FINANCIAL STATEMENTS. Upon written request the Association shall furnish each First Mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.

7.6 NOTICE OF MEETINGS. The Association shall furnish each First Mortgagee upon request of such Mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such Mortgagee to attend such meetings, one (1) such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

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

7.8 MANAGEMENT AGREEMENTS. Any management agreement and/or service contract entered into by the Association will be terminable by the Association without cause and without payment of a termination fee upon ninety (90) days' written notice or with cause upon thirty (30) days' written notice, and the term of such management agreement will not exceed the period of three (3)

years, renewable by agreement of the parties to such agreement for successive one (1)-year periods. In the event of the termination of the management agreement, as provided herein, the Association shall enter into a new management agreement with a new management agent prior to the effective date of the termination of old management agreement. Any decision to establish self-management by the Owners Association shall require the prior consent of Owners of Units to which at least sixty-seven percent (67%) of the votes are allocated and the approval of first mortgage holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of the Association.

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

#### ARTICLE VIII

##### MISCELLANEOUS PROVISIONS

#### 8.1 AMENDMENTS TO DECLARATION; APPROVAL OF OWNERS AND MORTGAGEES.

a. The consent of the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages shall be required to add or amend any provisions to this Declaration including those provisions which provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Elements;
- (4) Insurance or fidelity bonds;
- (5) Rights to use of the Common Elements;
- (6) Responsibility for maintenance and repair of the Units and Common Elements;
- (7) Expansion of the Project;

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

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

(10) Leasing of Units;

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

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

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

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

(15) Any provisions which are for the express benefit of first mortgage holders, insurers, or guarantors of first mortgages.

b. The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Units which have at least sixty-seven percent (67%) of the votes of Units subject to Mortgages, shall be required to:

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

(2) by act or omission, seek to abandon, partition, subdivide, encumber, or transfer the Common Elements, other than the granting of easements for public utilities or other public, uses except where a greater percentage is required, as provided in Paragraph 3.2 hereof, or by the Act; or

(3) use hazard insurance proceeds for losses to any condominium property for other than the repair,

replacement or reconstruction of such property, except as provided by statute in the case of substantial loss, and as provided in Paragraph 6.1b(3).

c. The consent of Owners of Units to which at least one hundred percent (100%) of the votes of the Association are allocated and the approval of First Mortgagees holding mortgages on Units which have at least sixty-seven percent (67%) of the votes of Units subject to mortgages shall be required to terminate or abandon the condominium status of the Project by act or omission, except where a different percentage is mandated by the Act in the event of a termination due to destruction or condemnation.

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

e. Any amendment to the Declaration must be approved by the requisite percentages of ownership interest at a meeting called by the Association, so long as such meeting is required by law. Should the meeting requirement not be mandated by law, an amendment may be effected with the certification by the Secretary of the Association that the necessary Owner approval was obtained, or by obtaining the signatures of the Owners who hold the requisite percentage ownerships.

f. No amendment to the Declaration may alter or destroy a Unit or a Limited Common Element without the consent of the Owners affected and the Owners' First Mortgagees.

g. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration or By-Laws, and who does not deliver or post to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request. The Association shall give timely written notice to all First Mortgagees of any proposed action which would require the consent of a specified percentage of First Mortgagees.

h. Unless otherwise provided in this Paragraph 8.1 or elsewhere in this Declaration, any of the provisions herein may be amended by the consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, provided that:

(i) No amendment shall affect the rights given to the Declarant, herein, without the consent of the Declarant;

(ii) No action to challenge the validity of an amendment adopted by the Association under this section or Paragraph 8.2 may be brought more than one (1) year after the amendment is recorded; and

(iii) To be effective, each amendment to the Declaration must be in writing, signed and acknowledged by the Board, indicating the required approval of such Owners and/or Mortgagees, or by the Declarant in the case of an amendment pursuant to Paragraph 8.2. Any such instrument shall be duly recorded in the Condominium Records of Brazos County, Texas.

8.2 CORRECTION OF ERROR. Declarant reserves, and shall have the continuing right, until the end of the Conversion Period, without the consent of the other Owners or any Mortgagee to amend this Declaration or the By-Laws for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration or Federal Housing Administration, as allowed by law.

8.3 OWNERSHIP OF COMMON PERSONAL PROPERTY. Upon termination of the Conversion Period, as defined herein, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the Premises, furnished by Declarant, and intended for the common use and enjoyment of the Condominium Unit Owners and occupants. No Owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the Owner's termination of possession of his Condominium Unit.

8.4 CHANGE IN DOCUMENTS. Upon written request, the holder of any mortgage covering any of the Condominium Units shall be entitled to written notification from the Association thirty (30) days prior to the effective date of any change in the Condominium documents.

8.5 NOTICE. All notices, demands or other notices intended to be served upon an Owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such Owner in care of the Unit number and Building address of such Owner. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association, shall be sent by ordinary or certified mail, postage prepaid, to 3833 Texas Avenue, Suite 100, Bryan, Texas, 77801, until such address is changed by a notice of address change duly recorded in the Brazos County Condominium Records.

8.6 CONFLICT BETWEEN DECLARATION AND BY-LAWS. Whenever the application of the provisions of this Declaration conflict with the application of any provision of the By-Laws adopted by the Association, the provisions or application of this Declaration shall prevail.

8.7 INVALIDATION OF PARTS. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

8.8 OMISSIONS. In the event of the omission from this Declaration of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof, or any part hereof, then such omitted matter shall be supplied by inference and/or by reference to the Act.

8.9 TEXAS CONDOMINIUM ACT. The provisions of this Declaration shall be in addition and supplemental to the Condominium Act of the State of Texas and to all other provisions of law.

8.10 GENDER. That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed, sealed and delivered by its proper corporate officers and its corporate seal to be affixed, this 4<sup>th</sup> day of May, A.D., 1984.

STANFORD ASSOCIATES, INC.

[Signature]  
By: John Schmid, Vice President

ATTEST:

Margaret Curtis  
Secretary

THE STATE OF TEXAS §  
COUNTY OF BRAZOS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared John Schmid, Vice President of Stanford Associates, Inc., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 4<sup>th</sup> day of May, A.D., 1984.



[Signature]  
Notary Public in and for  
The State of Texas  
My Commission Expires: 1/1/87