

**DECLARATION OF CONDOMINIUM
FOR
118 McGOWEN CONDOMINIUM**

May 25, 2004

**AFTER RECORDING RETURN TO:
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EXHIBIT LIST

Exhibit "A" Bylaws (Proposed)

Exhibit "B" Condominium Plan

Part I - Legal Description of Land

Part II - Plat and Plans

Part III - Percentage Ownership

Exhibit "C" Easements and Licenses

**DECLARATION OF CONDOMINIUM
FOR
118 McGOWEN CONDOMINIUM**

This Declaration of Condominium (this "**DECLARATION**") is made and executed this 25th day of May, 2004, by 118 McGowen, Ltd., a Texas limited partnership ("Declarant"), pursuant to and in accordance with the provisions of the Texas Uniform Condominium Act, as now existing or hereafter amended, the same being Chapter 82 of the Property Code, Vernon's Texas Code Ann. (the "Act"), for the purpose of submitting the hereinafter described real property and the improvements located or to be located thereon to a condominium regime.

WITNESSETH

WHEREAS, Declarant is the owner of certain real property (the "Land") and the improvements constructed and to be renovated thereon (collectively, "118 McGowen" or the "Condominium"), situated in the County of Harris, State of Texas, consisting of or to consist of two (2) Buildings containing eleven (11) individual residential units therein and certain other improvements located thereon more particularly described in the Condominium Plan (hereinafter defined); and

WHEREAS, Declarant desires by recording this Declaration to establish a condominium under the provisions of the Act with respect to the Condominium, and has on or about the date hereof caused to be incorporated 118 McGowen Condominium Association, Inc., a Texas non-profit corporation;

NOW, THEREFORE, Declarant does upon the recording hereof establish 118 McGowen as a condominium and does declare that 118 McGowen shall, after such establishment, be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved and in any other manners utilized, subject to the provisions of the Act and to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which shall be deemed to run perpetually with all or any portion of 118 McGowen unless terminated as provided herein and shall be a burden and a benefit to, and binding on, Declarant and any persons or entities acquiring or owning any interest in 118 McGowen, and their respective heirs, devisees, legal and personal representatives, successors and assigns. In furtherance of the establishment of the Condominium, it is provided as follows:

1. **Definitions.** Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the following meanings:

A. Act shall have the meaning set forth in the introductory paragraph of this Declaration.

B. Intentionally Omitted

C. Articles mean the Articles of Incorporation of the Association, and all amendments thereto.

D. Assessment. A share of the funds required for the payment of Common Expenses which from time to time are assessed against any Owner, including Regular Assessments, Special Assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorneys fees, and any other amounts due to the Association by the Owner or levied against the Unit by the Association.

E. Association. 118 McGowen Condominium Association, a Texas non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act, its successors and assigns, of which all Owners shall be members, which corporation shall be the governing and administrative body for all Owners for the protection, preservation, upkeep, maintenance, repair, operation and replacement of the common elements, and the government, operation and administration of the Condominium and the Condominium hereby established.

F. Intentionally Omitted

G. 118 McGowen. The Condominium.

H. Board or Board of Directors. The Board of Directors of the Association, as established in the Articles and the Bylaws.

I. Buildings are the two (2) three story Buildings situated or to be situated on the Land containing or which will contain up to eleven (11) Units as shown on the Condominium Plan.

J. Bylaws. The Bylaws of the Association attached hereto as Exhibit "A" and incorporated herein by reference for all purposes, which shall govern the administration of the Association, as such Bylaws may be from time to time hereafter lawfully amended.

K. Casualty. A fire, storm, earthquake, flood, natural disaster or other occurrence of any kind or nature which causes damage or destruction to any part of the Condominium.

L. Intentionally Omitted

M. Common Element Costs shall have the meaning set forth in Paragraph 14.8 hereof.

N. Common Elements. Shall constitute all of the General Common Elements and all of the Limited Common Elements of the Condominium, exclusive of the Units, as more particularly described in Paragraph 3 hereof.

O. Common Expenses. Expenses incurred after the date the first Deed conveying a Unit is recorded in the Real Property Records of Harris County, Texas, for the improvement, maintenance, repair, operation, management and administration of the Condominium; expenses declared Common Expenses either by the provisions of this Declaration or the Bylaws; and all sums lawfully assessed against the Common Elements by the Board. Common Expenses shall include sums assessed to maintain a reserve fund for the improvement repair and replacement of the Common Elements.

P. Common Expense Fund shall mean the fund into which Regular Assessments for Common Expenses are collected, and out of which Common Expenses are paid.

Q. Condominium Documents: (i) this Declaration; (ii) the Articles; (iii) the Bylaws; (iv) the Rules and Regulations and (v) the Condominium Plan.

R. Condominium Plan. The plans or plats of the Condominium attached hereto as Exhibit "B", comprised of the following parts:

- (i) Part I - a legal description of the Land;
- (ii) Part II - a plat of the Condominium showing the location of the Buildings and related improvements;
- (iii) Part III - a plat of each floor of the Buildings showing, among other matters, each Unit, its boundaries (horizontal and vertical), area, floor and Unit number; and
- (iv) Part IV - Percentage ownership interests allocated to each Condominium Unit.

S. Condominium. 118 McGowen as a Condominium established in conformance with the provisions of the Act, including the Land, and improvements, Buildings, structures, facilities, fixtures and equipment constructed, placed or erected therein or thereon and to be renovated, and all easements, rights, hereditaments and appurtenances thereto in any wise belonging or appertaining thereto, subject to the reservations herein contained.

T. Condominium Unit. A Unit together with the undivided share of or ownership interest in the Common Elements appurtenant thereto which interest in General Common Elements corresponds to its Percentage of Common Interest Ownership as more particularly described in Paragraph 6.E. hereof, together with the rights of that Unit in any Limited Common Elements designated for that Unit, whether exclusively or in conjunction with one or more of the Units.

U. Declarant. 118 McGowen, Ltd., a Texas limited partnership, its successors and assigns (insofar as any rights or obligations of Declarant are expressly assigned by it in whole, in part or by operation of law), including, but not limited to, a person, firm, corporation, limited liability company, partnership, association, trust or other legal entity, or any combination thereof, who or which acquires all or substantially all of the Units then owned by Declarant, together with its rights hereunder, by conveyance or assignment from Declarant, or by judicial or nonjudicial foreclosure, for the purpose of selling such Units to the public.

V. Declaration. This Declaration of Condominium.

W. Deed. Each Deed by which Units are conveyed by Declarant to Owners other than Declarant.

X. Director. A member of the Board.

Y. Eligible Mortgagee. A Mortgagee holding a mortgage on a Unit, which has submitted a written request that the Association notify it on any proposed action requiring the consent of a specified percentage of Eligible Mortgagees.

Z. First Mortgage shall mean a mortgage, deed of trust, or other security interest on a Condominium Unit which has priority over all other mortgages, deeds of trust, or security interests on the Condominium Unit.

AA. First Mortgagee shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

BB. General Common Elements shall mean the Land and all Buildings and other improvements thereon except the Units and Limited Common Elements, and shall include, without limiting the generality of the foregoing, all of these items described or referenced in Paragraph 3 hereof.

CC. Land. All that certain tract or parcel of real property situated in Harris County, Texas, said real property being more particularly described by metes and bounds in Part I of Exhibit "B".

DD. Limited Common Elements shall mean those Common Elements which are either limited to and reserved for the exclusive use of one Owner, or limited to and reserved for the common use of more than one, but fewer than all, of the Owners, and shall include, but not be limited to, all of those items described or referenced in Paragraph 3 hereof.

EE. Maintenance Manual shall mean the Maintenance Manual prepared by Declarant with respect to the Condominium.

FF. Majority of Unit Owners means the Owner or Owners of Units whose aggregate undivided Percentages of Common Interest Ownership in the Common Elements is in excess of fifty percent (50%).

GG. Managing Agent shall mean any professional manager (whether a person or firm) who contracts with the Board to manage the Condominium for an agreed compensation.

HH. Master Policy. The master insurance policy maintained by the Association pursuant to Paragraph 13 hereof.

II. Mortgagee. A bank, savings and loan association, insurance company, mortgage company, real estate investment trust, recognized institutional-type lender or its loan correspondent, agency of the United States government, person, corporation, limited liability company, partnership, association, trust corporation or other legal entity (including, without limitation, Declarant) which owns, holds, is the beneficiary of or collateral assignee of the beneficiary of a mortgage, deed of trust or security interest encumbering a Condominium Unit.

JJ. Owner. A person or persons (or their estate(s), firm, corporation, limited liability company, partnership, association, trust or other legal entity, or any combination thereof) who or which jointly or collectively own aggregate fee simple record title to one (1) or more Units including, without limitation, Declarant, but does not include a person or entity having an interest in a Unit solely as security for an obligation, or a person or entity having an equitable

interest in a Unit by virtue of, without limitation, an installment land contract, a contract for deed, a lease with an option to purchase, or purchase option.

KK. Intentionally Omitted.

LL. Percentage of Common Interest Ownership. The percentage of common interest ownership assigned to each Unit pursuant to Paragraph 6.E. hereof.

MM. Person. A natural individual, corporation, limited liability company, partnership, trustee, association, personal representative or other legal entity capable of holding title to real estate.

NN. President. The President of the Board.

OO. Record of Mortgages shall have the meaning set forth in Paragraph 18.A.

PP. Regular Assessments. Assessments which are described in Paragraph 11.A. hereof.

QQ. Rules and Regulations. The Rules and Regulations of the Association, the initial version of which are attached to the Bylaws as Schedule "A", as from time to time amended by the Board in accordance with the provisions of this Declaration and the Bylaws, concerning the use by Owners of Units and the Common Elements and the administration of the Condominium.

RR. Secretary. The Secretary of the Board.

SS. Special Assessments. Assessments other than those described Paragraph 11.A. hereof.

TT. Unit. One of the separate and individual units of space into which the Buildings is divided for individual and separate use and ownership, as provided for in the Act and described in this Declaration and the plats attached hereto, including the air space encompassed by the boundaries of the Units, and interior surfaces contained within the demising walls, closed doors and closed windows of the Unit and the structural floor and ceiling of such Unit as shown on the Condominium Plan, also including all fixtures and improvements therein contained, but not any of the structural components of the Buildings, and certain other construction and elements thereof or therein which are to be individually and separately owned, as hereinafter defined, described and established in this Declaration, encompassing an enclosed air space and appurtenant Balcony (if any), parking space and storage space and one (1) or more rooms occupying all or part of one (1) or more floors in the Buildings as such space may be further described and delineated in the Condominium Plan.

UU. Unit Costs shall have the meaning ascribed thereto in Paragraph 14.B. hereof.

2. The Condominium.

A. Units. The individual Units, more particularly described in Paragraph 6 hereof, are to be used only for the purposes permitted in Paragraph 15 hereof. Each Owner shall own

title in fee simple to his or her Unit and shall have the exclusive right to the use and occupancy of his or her Unit, subject to the provisions of this Declaration. There shall be appurtenant to each Unit:

- (i) An undivided share of the General Common Elements corresponding to its Percentage of Common Interest Ownership and the exclusive right to use such Limited Common Elements as are appurtenant to such Unit; and
- (ii) Membership of the Owner in the Association.

B. Intentionally Omitted

3. **Common Elements.** The Common Elements of the Condominium are as follows:

A. General Common Elements. The General Common Elements consist of:

- (i) The Land, including all drives, driveways, sidewalks, outside walkways, controlled access facilities, landscaping and parking areas;
- (ii) The foundations, main, common and bearing walls, girders, slabs, beams and columns (including any windows and doors therein), exterior walls to interior of studs, structural and supporting parts of the Buildings, roofs, ceilings, floors, and any other portion of the Buildings not included within any Unit or designated hereby as a Limited Common Element;
- (iii) The utilities and, in general, all devices or installations existing for common use by the Owners;
- (iv) Intentionally Omitted;
- (v) The premises, facilities and tangible personal property, if any, used for the common storage, maintenance, operation or repair of the Condominium;
- (vi) The fire protection system, controlled access system, and other mechanical or other systems, and components relating thereto;
- (vii) To the extent that they serve more than one Unit, cable or satellite receivers, other telephone, cable, video and fiber optic facilities and all equipment appurtenant thereto (if any);
- (viii) The components or installation of equipment and materials comprising central services such as electrical power, gas, water, waste collection, and all similar devices and installations which serve more than one Unit;
- (ix) All other elements necessary to the existence, upkeep and safety of the Condominium including any portion of the Buildings, and the Land not specifically a Unit, appurtenant to a Unit or a Limited Common Element;

(x) All other structures, facilities and equipment not part of or serving the Unit(s) and located in the Condominium (but specifically excluding all heating, ventilation and air conditioning equipment); and

(xi) All replacements and additions to any of the foregoing.

B. Limited Common Elements. The Limited Common Elements, being those Common Elements which are hereby designated as reserved for the use by specified Owners to the exclusion of others, consist of the following:

(i) If any, air handlers, pipes, ducts, electrical wiring, communication equipment, conduits, chutes, flues, ducts, wires, plumbing fixtures, bearing walls, bearing columns or other fixtures are partially within and/or partially outside the designated boundaries of a Unit, that portion serving only that Unit is a Limited Common Element; however, that portion serving more than one Unit or the Common Elements is a part of the General Common Elements;

(ii) Intentionally Omitted;

(iii) Intentionally Omitted; and

(iv) Each balcony, if any, opening from any Unit;.

C. Use of the Common Elements. Each Owner shall have the right and nonexclusive easement to use and enjoy the Common Elements, in common with all other Owners, for the purposes for which they are intended and as may be required for the purposes of access and ingress and egress to and the use and occupancy and enjoyment of the respective Units owned by such Owners without hindering or encroaching upon the lawful rights of other Owners; provided, however, that the Association may temporarily suspend an Owner's rights under the easement granted herein, other than for ingress and egress, for the failure to pay Assessments or to abide by the Rules and Regulations for use of the Common Elements. Such right to use and enjoy the Common Elements shall extend to each Owner, the members of his and/or her immediate family, the tenants or other lawful occupants of each Unit and their guests, visitors, invitees or permittees, and all such other persons as may be invited or permitted by the Board or its representative to use or enjoy the Common Elements or any part thereof. Such right to use the Common Elements shall be subject to and governed by the provisions of the Act and the Condominium Documents. Unless converted by Declarant pursuant to Paragraph 2.B., the Common Elements are not subject to partition and any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such interest is allocated is void. Each Owner shall be deemed to have an easement in the interest of all other Owners in the Common Elements for the installation, maintenance, repair or replacement of all individually owned fixtures, equipment and appliances which are in any way affixed to, supported by or located in any space or structure constituting part of the Common Elements, and the cost of such installation, maintenance, repair or replacement shall be borne by such Owner. The costs and expenses for the maintenance, repair, upkeep, operation and replacement of the Common Elements shall be a common expense of all Owners in proportion to their respective Percentages of Common Interest Ownership.

Carports and balconies shall be Limited Common Elements for the exclusive use of the Owner of the Unit to which they are appurtenant pursuant to this Declaration but only as and to the extent indicated in the Condominium Plan and/or each Deed. Any conveyance or encumbrances of a Unit shall be deemed to convey or encumber such Unit and all appurtenances thereto as set forth in Paragraph 2 hereof without specifically or particularly referring to any such appurtenances.

D. Transfer of Interest in Common Elements. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

4. Maintenance Responsibilities.

A. Owners' Responsibilities.

(i) Each Owner shall bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: Any and all lath, furring, wallboard, sheetrock, plasterboard, plaster, paneling, tiles, wallpaper, paint, or other materials constituting a part of the interior surfaces of the perimeter walls and ceilings; interior surfaces of all structural or load bearing interior walls; interior surfaces of all floors (including carpeting, tile, finished flooring, wood flooring, and all other portions of the floors constituting a part of the finished surfaces); nonstructural or non-load-bearing interior walls; heating, cooling and ventilation systems; garbage disposals, ranges, refrigerators, dishwashers and any and all other appliances of any nature whatsoever; interior and exterior doors; interior glass surfaces, exterior glass surface facing onto balconies, window panes, mullions and light bulbs; plumbing and other fixtures of any nature whatsoever from the point at which the plumbing or other fixtures commence service to the individual unit; "built-in" features; any decorative features; and any furniture and furnishings. All of the exteriors of the doors, all glass in windows and doors and all balconies will remain in conformity with the original installation. Should an Owner fail to maintain or repair its Unit or any portion of the Limited Common Elements appurtenant to such Unit, the Board may effectuate same and assess the Owner for the cost thereof.

(ii) Within thirty (30) days after the date of acquiring an interest in a Unit, the Owner shall provide the Association with: (a) the Owner's mailing address, telephone number and driver's license number, if any; (b) the name and address of the holder of any lien against the Unit and any loan number; (c) the name and telephone number of any Person occupying the Unit other than the Owner or Owners; and (d) the name, address and telephone number of any Person managing the Unit as agent for the Owner. An Owner shall notify the Association within thirty (30) days after the Owner has notice of a change of any of the information set forth in (a) through (d) above, and shall provide that information on request by the Association from time to time.

B. Common Elements. The Common Elements shall be maintained in good condition by the Association, subject to reasonable wear and tear and Casualty. The costs and expense for the upkeep and maintenance of the Common Elements shall be a Common Expense of the Owners, and shall be included in the Assessments for the usual and ordinary costs and

expenses for the maintenance, repair, upkeep and operation of the Common Elements, and each Owner shall pay his or her pro-rata share thereof. In particular. The Association shall also maintain, without limitation, as part of the Common Elements all water, sanitary sewer, storm sewer and paving within the common area.

C. Utilities. Each Owner shall bear the cost of any utility service for his or her Unit which is individually metered and billed directly by the utility company furnishing such service to such Owner. Except to the extent such costs are borne by each Owner as set forth in the preceding sentences, the cost of water, electricity, gas, trash removal and any other utility service shall be a Common Expense. With the exception of common ownership with other Owners, no Owner shall be deemed to own the utilities which run through his or her Unit and serve one or more other Units.

5. **Easements and Licenses.** In addition to the easements and licenses recited in Exhibit "C" hereto, the ownership of each Condominium Unit shall be subject to the easements and licenses which are described in this Section 5.

A. For Owners. Subject to such reasonable rules as the Association may from time to time impose, each Owner shall have the following easements to, through and over the Common Elements to the extent necessary for such Owner's maintenance responsibilities:

- (i) to paint, remove and replace any finish on the interior surface of any Common Element within his or her Unit;
- (ii) to install, repair, maintain, remove and/or replace any plumbing, heating, cooling, lighting, cooking or other fixture or equipment which is a part of his or her Unit or which would become a part thereof when installed in any bearing wall, floor, ceiling or roof, provided, however, that such installation, repair, maintenance, removal and/or replacement shall not impair the structural integrity of the Buildings, nor shall it adversely affect any adjacent Unit, nor shall it alter the external appearance of the Buildings, nor shall it be visible from the outside of the Buildings, nor shall it be performed on the roof of the Condominium without the written permission of the Association; and
- (iii) to drive and remove nails, screws, bolts and the like into and from bearing walls, floors, ceiling and roof; provided, however, that such action shall not impair the structural integrity of the Buildings, nor shall it adversely affect any adjacent Unit, nor shall it alter the exterior appearance of the Buildings, nor shall it be performed on the roof of the Condominium without the written permission of the Association.

An Owner has an unrestricted right of ingress and egress, subject to the reasonable rules and regulations promulgated by the Board, to his or her Unit. Such right of ingress and egress is perpetual and passes with the transfer of ownership of the Unit.

B. For Utilities. Municipalities and authorized public utilities (or private companies) furnishing services, lines, pipes, wires, conduits, facilities and equipment to the Condominium for common use such as water, electricity, gas, cable television or similar services, and/or telephone shall have access to the Common Elements and each Unit as may be necessary or

desirable for the installation, repair, maintenance, removal and/or replacement of such services, and any costs incurred in opening and repairing any wall of the Condominium to install, repair, maintain, remove or replace such authorized services (except as otherwise provided herein) shall be a Common Expense. However, installed utility lines, public or private, shall be considered to be located in a valid easement and may remain in the installed location and be repaired and/or replaced in such location.

C. For the Declarant and the Association. Declarant and the Association (and their duly authorized representatives and agents) shall have a reasonable right of entry into any Unit to (i) make emergency repairs, (ii) enforce the terms of the Condominium Documents, (iii) protect the property rights and welfare of other Owners, (iv) do other work reasonably necessary for the proper maintenance or operation of the Condominium, (v) perform any of the duties and obligations of Declarant and the Association which are set forth in the Condominium Documents, (vi) prevent or terminate waste of water purchased by the Association as a Common Expense, and (vii) perform maintenance and repairs of the Unit that, if not performed, may result in increased damage by water to components of the Condominium that the Association maintains. Except in the event of an emergency, or in the event the Board or its agents are unable to contact any Owner or occupant of a Unit after reasonable effort, such right of entry shall be exercised only in the presence of the Owner or other occupant of the Unit entered. Such right of entry shall be exercised in a manner as to avoid unreasonable interference with the possession, use or enjoyment of the Unit and shall, whenever reasonably possible, be preceded by reasonable notice to the Owner or occupant thereof. In the event any damage is caused by such entry such damage shall be a Common Expense. If the Association, acting through its Board of Directors, shall require (without any obligation to so require), the Association shall have and hold duplicate keys sufficient to permit access to all sprinkler areas within each Unit. The Association shall have the right to grant permits, licenses and easements on, over, under and across the Common Elements for utility, access and other purposes reasonably necessary or useful for the proper maintenance, enjoyment and operation of the Condominium.

D. For Encroachments. If any portion of the Common Elements shall be situated or encroach upon any Unit, or if any Unit shall actually encroach upon any portion of the Common Elements, as the Units and Common Elements actually and physically exist, or as shown by the Condominium Plan, then there shall be deemed to be mutual valid easements for such encroachments and for the maintenance of same so long as such encroachments exist; provided, however, such easement or easements shall not relieve an Owner of liability in case of the Owner's willful misconduct or failure to adhere to the Condominium Plan. In the event the Buildings or other structure is totally or partially damaged or destroyed and then repaired, restored or rebuilt, the Owners agree that all encroachments of or upon the Common Elements due to repair or reconstruction shall be permitted and that all valid easements for such encroachments and maintenance thereof shall exist.

6. Units.

A. Designation and Percentage Ownership of Units. On the Condominium Plan, the Units located in the Buildings are numbered by Unit number, and the percentage ownership attributable to each such respective unit is shown. In determining dimensions and areas for purposes of establishing the Percentage of Common Interest Ownership assigned to each Unit, each enclosed space in a Unit is measured from: (i) the interior surface of each Unit's perimeter

walls; (ii) the outside surfaces of exterior bearing walls (including all glass and glass substitutes), (iii) the interior surface of all other walls, (iv) the interior surfaces of finished, unpainted floors and ceilings, but (v) excluding all General Common Elements and all Limited Common Elements appurtenant to such Unit except those Common Elements which consist of chutes, flues, ducts, wires, conduits, bearing walls, bearing columns, or any other fixture to the extent located within the designated boundaries of a Unit determined as set forth above.

B. Description of Units. Each Unit shall consist of the following portions of the Buildings (i) the interior surface of each Unit's perimeter walls; (ii) the interior surface of the ceiling; (iii) the upper surface of the concrete floor of each Unit; (iv) the interior surface (including all glass or glass substitutes) of the windows and doors set in each Unit's perimeter walls; (v) the interior surface of each balcony appurtenant to a Unit, (vi) any and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting part of the interior surfaces of (i) through (v) above (vii) the air space enclosed within the area described and delineated in (i) through (v) above; (viii) any and all walls, ceilings, floors, partitions, dividers, fixtures and improvements wholly within such air space (but excluding any pipes, ducts, wires, cables, conduits, bearing beams or supports contained within such walls, ceilings, floors, partitions and dividers, or between chase walls or within such air space as per Paragraph 3.A. hereof); and (ix) all plumbing, heating, ventilating, air conditioning, lighting, cooking and other fixtures and equipment wholly within a Unit and serving only such Unit (exclusive of pipes, ducts, wires, cables or conduits located within such air space as per Paragraph 3.B. hereof).

C. Approximate Measurements. It is expressly stipulated, and each and every Owner, his or her heirs, devisees, legal and personal representatives, and successors and assigns accepting title to a Condominium Unit subject to this Declaration acknowledges that the square footage, size and linear dimensions of each Unit (as shown on the Condominium Plan), and each area constituting any part of the Common Elements as set out and shown in this Declaration or the plans and documents attached hereto, are approximate and are shown for descriptive purposes only and do not necessarily reflect or represent the precise percentage of square footage of any specific portion of the Condominium, and that Declarant does not warrant, represent or guarantee that any Unit actually contains the square footage, size and linear dimensions and elevation reflected thereon or herein. Each Owner further acknowledges that he or she shall have had full opportunity and is under a duty to inspect and examine his or her Unit prior to the purchase thereof and agrees that the Unit is purchased as actually and physically existing, and expressly waives any claim or demand of any kind which he or she may have against Declarant or any person whomsoever by reason of any difference, shortage or discrepancy between such Owner's Unit as actually and physically existing and as reflected on the Condominium Plan, and further waives any requirement for adjustments to the percentage ownership of interest shown in the Condominium Plan unless approved by the requisite percentage of Owners and Mortgagees.

D. Boundaries of Units. In interpreting deeds, mortgages, deeds of trust and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Units or of any Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be the boundaries, regardless of settling, rising, or lateral movement of the Buildings, and regardless of variances between the boundaries shown on the Condominium Plan and those of the Buildings.

E. **Percentages of Common Interest Ownership.** The Percentage of Common Interest Ownership assigned to each Unit is based upon the area within each Unit, is set forth in Part III of the Condominium Plan attached hereto as Exhibit "B"; and shall be determinative of the weight assigned to such Owner's vote at meetings of the Association and the proportionate share of each respective Owner in: (i) the General Common Elements, (ii) the proceeds of the Condominium distributable pursuant to Paragraph 14 hereof, and (iii) the Assessments. The total of the Percentages of Common Interest Ownership assigned to all Units in the Condominium is one hundred percent (100%).

Each Percentage of Common Interest Ownership in the Common Elements so allocated pursuant to the foregoing paragraph was assigned by Declarant to the designated Unit solely for purposes of this Declaration and, regardless of any other matter, such Percentage of Common Interest Ownership shall remain fixed and constant and, except as provided herein, the same cannot be changed except by the written consent of each and every Owner and Mortgagee of such Unit, duly executed, acknowledged and filed for record as a partial amendment to this Declaration. The ownership interests in the Common Elements shall be undivided interests and the Common Elements shall remain undivided and shall not be the object of an action for partition or division of the ownership, so long as such ownership interests are suitable in the context of a condominium; and, in any event, all Mortgagees must be paid prior to the bringing of an action for partition, or the consent of all Mortgagees to such action must be obtained. The percentage of the Common Elements allocated to each Unit shall not be separated from such Unit or separately sold, conveyed, encumbered or otherwise separately disposed of, and each interest in the Common Elements shall follow the respective Unit to which it is allocated, and shall be deemed to be conveyed and/or encumbered with its respective Unit to which it is allocated even though the description in the instrument of conveyance or encumbrance shall refer only to the Unit.

F. **Maximum Units.** The maximum number of Units that Declarant reserves the right to create within the Condominium shall be eleven (11).

7. Membership in the Association. Membership in the Association and voting by Owners shall be in accordance with Bylaws of the Association and the following provisions:

A. **Members.** Upon becoming an Owner, each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association shall also automatically cease, and no other person or entity shall be entitled to membership in the Association, except as expressly provided herein or in the Bylaws. No Owner shall be required to pay any consideration whatsoever solely for his or her membership in the Association.

B. **Transfer of Membership.** The share of an Owner in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his or her Unit. Upon any transfer of ownership of any Unit, the new Owner acquiring or succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association.

C. **Votes.** Except as otherwise provided herein or in the Bylaws, each Owner shall be entitled to a vote, the value of which shall equal the total of the Percentages of Common Interest Ownership assigned to the Units owned by such Owner as set forth in this Declaration. Provided,

however, that any Owner who has been given notice by the Board or by the President that he or she is in violation of the Condominium Documents, whether by virtue of delinquency in payment of Assessments or otherwise, shall not be entitled to vote at any meeting of the Association (unless otherwise required by the Act) until such default has been cured.

D. Who Can Vote. No Owner, other than Declarant, shall be entitled to vote at any meeting of the Association until such Owner has presented evidence of ownership of a Condominium Unit to the Association (and written proxy if voting by proxy). The vote of each Owner may only be cast by such Owner or by a written proxy given by such Owner to his or her duly authorized representative. If title to a Unit shall be in the name of two (2) or more Owners, any one (1) of such Owners may vote as the Owner at any meeting of the Association and such vote shall be binding on such other Owners who are not present at such meeting unless written notice to the contrary has been received by the Association, in which case the unanimous action of all such Owners (in person or by proxy) shall be required to cast their vote as Owners. If two (2) or more of such Owners are present at any meeting of the Association, then unanimous action shall be required to cast their vote as Owners. Declarant or its representative may exercise all the votes allocated to the unsold Units while same are owned by Declarant.

8. Association Administration and Management.

A. Books and Records. The Association or Managing Agent shall keep or cause to be kept detailed books and records showing all expenditures and receipts of the administration of the Condominium which shall specify the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Association and the Owners. Such books and records shall be open for inspection by Owners during reasonable working hours on weekdays and shall be audited annually by qualified independent auditors in accordance with generally accepted accounting principles within ninety (90) days after the end of any fiscal year of the Condominium, or as soon thereafter as practicable. Unless the Board shall determine otherwise, the fiscal year of the Association shall be the calendar year. The cost of such audit shall be an expense of the administration of the Condominium, and copies of any such audit shall be made available to all Owners.

B. Mortgagee Access to Books and Records. A Mortgagee shall, upon written request, be entitled to: (i) inspect the Condominium Documents and the books and records of the Condominium, (ii) receive, free of charge, an annual financial statement of the Condominium, as soon as the same is available to the Owners, (iii) receive written notice of all meetings of the Association and (iv) be permitted to designate a representative to attend all meetings of the Association.

C. Association Records. In addition to the financial records described in Paragraph 8.A., the Association or Managing Agent shall keep or cause to be kept: (i) the plans and specifications used to renovate the Condominium, to the extent furnished by the Declarant; (ii) the condominium information statement and any amendments thereto, (iii) the name and address of each Owner, (iv) voting records, proxies and correspondence relating to amendments to the Declaration, and (v) minutes of meetings of the Association and the Board of Directors. All financial and other records of the Association shall be available at its principal office for examination during normal business hours by an Owner and/or the Owner's authorized agent, and holders, insurers and guarantors of any First Mortgages.

D. Association Costs and Expenses. All costs incurred by the Association, including, but not limited to, any costs (including attorneys' fees) incurred in satisfaction of any liability arising herein, caused by or in connection with the Association's operation, maintenance or use of the Condominium, shall be an Association expense. All sums received by the Association, including, but not limited to, all sums received as proceeds of, or pursuant to, any policy of insurance carried by the Association, shall be the receipts of the Association.

E. Bylaws. The governance and administration of the Condominium shall be in accordance with the Bylaws which have been initially adopted by Declarant as sole Owner of the Condominium, and which are attached hereto as Exhibit "A". The Bylaws may be amended by Declarant as hereafter provided and from time to time by the Association in accordance with the provisions thereof.

F. Administration by Association/Managing Agent. The affairs of 118 McGowen shall be administered by the Association. Unless otherwise expressly stated in this Declaration or the Bylaws, the Association, acting through its board of directors, may:

- (i) adopt and amend the Bylaws;
- (ii) adopt and amend budgets for revenues, expenditures, and reserves, and collect Assessments from Owners;
- (iii) borrow money, and grant liens or security interests in properties owned by the Association (which excludes Common Elements and/or Units unless such Units are owned by the Association) as security therefor, including the Association's right to future income from common expense assessments;
- (iv) hire and terminate Managing Agents and other employees, agents, and independent contractors, provided that any agreement for professional management of the Condominium, or any other contract providing for services of the Declarant, may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on 90 days or less prior written notice;
- (v) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Condominium;
- (vi) make contracts and incur liabilities relating to the operation of the Condominium;
- (vii) regulate the use, maintenance, repair, replacement, modification, and appearance of the Condominium;
- (viii) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of Units and Common Elements, to the extent the regulated actions affect Common Elements or other Units;
- (ix) cause additional improvements to be made as a part of the Common Elements;

- (x) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except Common Elements;
- (xi) acquire, lease, encumber, exchange, sell, or convey a Unit;
- (xii) grant easements, leases, licenses, and concessions through or over the Common Elements;
- (xiii) impose and receive payments, fees, or charges for the use, rental or operation of the Common Elements and for services provided to Owners;
- (xiv) impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given, reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations;
- (xv) adopt and amend rules regulating the collection of delinquent Assessments and the application of payments;
- (xvi) adopt and amend rules regulating the termination of utility service to a Unit, the Owner of which is delinquent in the payment of an Assessment that is used, in whole or in part, to pay the cost of that utility;
- (xvii) impose reasonable charges for preparing, recording, or copying declaration documents, resale certificates, or statements of unpaid Assessments;
- (xviii) enter a Unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the Common Elements, another Unit, or the occupants;
- (xix) assign its right to future income, including the right to receive Regular Assessments, but only to the extent this Declaration so provides;
- (xx) suspend the voting privileges of or the use of certain Common Elements by an Owner delinquent for more than thirty (30) days in the payment of Assessments;
- (xxi) purchase insurance and fidelity bonds it considers appropriate or necessary;
- (xxii) exercise any other powers conferred by this Declaration, the Articles or Bylaws;
- (xxiii) exercise any other powers that may be exercised in the State of Texas by a corporation of the same type as the Association; and
- (xxiv) exercise any other powers necessary and proper for the government and operation of the Association.

Any of the duties, powers and functions of the Board may be delegated to the Managing Agent.

G. Board of Directors. The affairs of the Association shall be managed by a Board of Directors, subject to the provisions in Paragraph H below, providing for a period of Declarant control of the Association. At or as soon as convenient after the organizational meeting of the Association, the Association shall elect the first Board of Directors which shall consist of not less than three (3) members, all of whom shall serve without pay or compensation (except as provided in the Bylaws), for such term as specified in the Bylaws.

H. Declarant Control of the Association. There shall be a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Directors. During such period of Declarant control, the members of the Board shall serve at the pleasure of the Declarant and the number of members may be reduced to three (3). The period of Declarant control terminates not later than the earlier of one (1) year after conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than the Declarant or three (3) years after the first Unit is conveyed. Not later than one hundred twenty (120) days following the termination of the period of Declarant control, the Owners shall elect a Board of Directors of at least three (3) members (which may include the Declarant), all of whom shall be Owners. If any Unit is owned by a partnership or corporation or limited liability company, any manager, officer, partner or employee of that Owner shall be eligible to serve as a Director and shall be deemed to be an Owner for purposes of the preceding sentence. The Board of Directors shall elect the officers of the Association before the 31st day after the date the period of Declarant control terminates. The persons elected shall take office on election.

I. Termination of Contracts and Leases of Declarant. The Association may terminate, without penalty, contracts or leases between the Association and the Declarant or an affiliate of Declarant if:

- (i) the contract or lease is entered into by the Association when the Association is controlled by the Declarant;
- (ii) the Association terminates the contract or lease before the first anniversary of the date a Board of Directors elected by the Owners takes office; and
- (iii) the Association gives at least ninety (90) days' notice of its intent to terminate the contract or lease to the other party.

J. Management Certificate. The Association shall record in the Office of the County Clerk of Harris County, Texas, a certificate, signed and acknowledged by an officer of the Association, stating: (i) the name of the Condominium, (ii) the name of the Association, (iii) the location of the Condominium, (iv) the recording date of this Declaration, and (v) the mailing address of the Association, or the name and mailing address of the Managing Agent. The Association shall record an updated management certificate within thirty (30) days after the date the Association has notice of a change in any of the information set forth in (i) through (v) above as set forth in the recorded management certificate.

K. Resale Certificate. In connection with the sale of any Unit (other than a sale by Declarant), the Association shall furnish to the selling Owner or the Owner's agent, within ten

(10) days after the date of receiving a written request from the Owner, a resale certificate containing the following information: (i) the current operating budget of the Association; (ii) any right of first refusal or other restraint contained in the Declaration that restricts the right to transfer a Unit; (iii) the amount of the periodic Regular Assessments and the unpaid Regular Assessments or Special Assessments currently due and payable by the selling Owner; (iv) other unpaid fees or amounts payable to the Association by the selling Owner; (v) capital expenditures, if any, approved by the Association for the next twelve (12) months; (vi) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the Association for a specified project; (vii) any unsatisfied judgments against the Association; (viii) the nature of any pending suits against the Association; (ix) insurance coverage provided for the benefit of unit owners; (x) whether the Board of Directors has knowledge that any alterations or improvements to the Unit or the Limited Common Elements assigned to that Unit violate the Declaration, the Bylaws or the Rules and Regulations; (xi) whether the Board of Directors has received notice from a governmental authority concerning violations of health or Buildings codes with respect to the Unit, the Limited Common elements assigned to that Unit, or any other portion of the Condominium; (xii) the remaining term of any leasehold estate that affects the Condominium and the provisions governing an extension or renewal of the lease; (xiii) the name, mailing address, and telephone number of the Managing Agent, if any; and (xiv) such other information as the Association may deem appropriate. The Association shall not be liable to a selling Owner or such Owner's prospective purchaser for delay or failure to furnish a resale certificate, and an officer or agent of the Association is not liable for a delay or failure to furnish a resale certificate unless the officer or agent willfully refuses to furnish the resale certificate or is grossly negligent in not furnishing the resale certificate.

In the event that a properly executed resale certificate incorrectly states the total of delinquent sum owed by the selling Owner to the Association, the purchaser shall not be liable for payment of additional delinquencies that are unpaid on the date the resale certificate is prepared and that exceed the total sum stated in the resale certificate; provided, however, in no event shall a resale certificate affect: (i) the Association's right to recover debts, claims, or amounts that are due by the Seller which became due prior to the date the certificate was prepared, regardless of whether the resale certificate correctly stated the total of the delinquent sum owed by the selling Owner to the Association; (ii) the Association's right to recover debts or claims that arise or become due after the date the certificate is prepared; or (iii) the Association's lien on a Unit securing payment of future Assessments.

L. Intentionally Omitted.

M. Restrictions on Alienation of Common Elements. Notwithstanding any other provision of this Declaration, the Association may not seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, or any part thereof, by act or omission, without first receiving the prior written approval thereof by Owners holding at least sixty-seven percent (67%) of the Common Interest Ownership (other than that held by the Declarant) and First Mortgagees holding sixty-seven percent (67%) of the First Mortgages (based on one vote for each First Mortgage held). Nothing in this Paragraph 8.M. shall limit the authority of the Association to grant an easement for the use of any public utility(ies) or for any other public purpose(s) consistent with the intended use of the Common Elements by the Condominium or limit the right of Declarant or other Owner of a Commercial Unit to convert Limited Common Elements (e.g. parking spaces) into Commercial Units per Paragraph 2.B.

9. Meetings of Owners.

A. **First Meeting.** The first meeting of Owners shall be held not later than the earlier of (i) one hundred twenty (120) days following the conveyance by Declarant of more than seventy-five percent (75%) of the Units created, to Owners other than Declarant or (ii) three (3) years after the first Unit is conveyed by Declarant. Until the first meeting of Owners, the affairs of the Association shall be managed by the first Board named in the Articles or their successors, and during such period it shall have the right to exclusively represent, act as and constitute the Board of Directors, and shall have the right to exclusively exercise and perform all of the rights, powers, authority, functions and duties herein or in the Act or Bylaws given to the Association or the Board; provided, however, not later than one hundred twenty (120) days following the conveyance by Declarant of more than fifty percent (50%) of the Units, not less than one-third of the members of the Board of Directors shall be elected by Owners other than the Declarant.

B. **Annual Meetings.** Following the first meeting of Owners, there shall be an annual meeting of Owners at which the Board, or a portion thereof, shall be elected, and other meetings as provided for herein or in the Bylaws. Special meetings of Owners shall be called by the President, a majority of the Directors or any individual Owner or collection of Owners having twenty percent (20%) of the Percentages of Common Interest Ownership entitled to be cast at such special meeting. Notice of time, place and subject matter of all meetings shall be personally delivered or mailed to each Owner or to the individual representative designated by such Owner at the last address given by such Owner to the Association. If any Owner shall fail to give an address to the Association for the mailing of notices, all notices shall be personally delivered or mailed to the Unit of such Owner; and such Owner shall be deemed to have been given notice of any such meeting irrespective of the actual receipt of the same.

10. Directors.

A. **Number of Directors.** The initial number of Directors has been set by the Articles at three (3) which shall continue until the initial meeting of Owners after the expiration of the Declarant Control Period. Thereafter, there shall be not less than three (3) nor more than five (5) Directors. Any expansion or subsequent contraction (to not less than three (3) of the number of Directors shall be effected by an amendment to the Bylaws. Each Director must be an Owner with the exception of the first Board (and any replacement Directors selected by Declarant prior to the first meeting of Owners) designated in the Articles, which Board and any replacement Directors selected by Declarant may remain or be reelected as Directors following the first meeting of Owners. If any Unit is owned by a partnership, corporation, limited liability company, or trust, any officer, partner, trustee, or employee of that Owner shall be eligible to serve as a Director and shall be deemed to be an Owner for purposes of the preceding sentence. Notwithstanding anything contained herein to the contrary, this Paragraph 10 may not be amended without the prior written consent of Declarant, until one hundred twenty (120) days following the conveyance by Declarant of more than seventy-five percent (75%) of the Units.

B. **Terms of Directors.** At the initial meeting of Owners after the expiration of the Declarant Control Period, one (1) Director shall be elected for a term of three (3) years, one (1) Director shall be elected for a term of two (2) years and one (1) Director shall be elected for a term of one (1) year. Thereafter, at the annual meeting of Owners, the Owners shall elect a

Director to serve for a term of three (3) years to fill the position of the Director or Directors whose term or terms expired at the time of the annual meeting.

C. Election of Officers. The officers of the Association shall be elected by the Board.

D. Indemnity of Board. The Association shall indemnify each member of the Board, the members of any committee(s) established by the Board, and each of its officers against expenses and liabilities (including the cost and expenses of defending against any such alleged liability) as and to the extent set forth in the Bylaws. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which a Director, committee person, officer, or employee may be entitled by law or under any Bylaw, agreement, vote of members or otherwise.

E. Contracts. The Board may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association whether or not a Director or such officer is interested in the transaction (as and to the extent set forth in the Bylaws). Such authority may be general or confined to specific instances. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or agent of the Association and in such manner as shall, from time to time, be determined by resolution of the Board. All funds of the Association shall be deposited, from time to time, to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

11. Assessments.

A. Regular Monthly Assessments for Common Expenses. There shall be monthly assessments (the "Regular Assessments") of each Owner for payments to the Common Expense Fund. Both Regular Assessments and Special Assessments shall be computed on the basis of the individual Owner's Percentage of Common Interest Ownership. The Regular Assessments shall commence as to each Owner on the date of delivery of a Deed to the Condominium Unit from Declarant to the purchaser thereof, and Regular Assessments shall be due on the first (1st) day of each subsequent calendar month thereafter, without notice.

B. Common Expenses, Assessments. Each Owner shall be bound and obligated and agrees to pay, as assessments therefor are made during his tenure of ownership, (i) his or her pro-rata part and share of the utilities and the expenses of administration, maintenance, repair, upkeep, protection, replacement, and operation of the Common Elements, (ii) assessments made by the Board of Directors and/or the Association, and (iii) any other expenses lawfully agreed to by the Association or the Board, as authorized by the Act, this Declaration or the Bylaws, all of which expenses are included in the term "Common Expenses." The Board of Directors shall be responsible for levying and collecting Special Assessments and Regular Assessments for the Common Expenses.

C. Reserves for Assessments. The Board shall establish an annual budget in advance for each fiscal year and such budget shall project all Common Expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, together with a reasonable allowance for contingencies and reserves. Such reserves shall include, without limitation, an adequate reserve fund for the maintenance, repair

and replacement of those Common, Elements that must be replaced on a periodic basis, and shall be payable in regular installments fixed by the Board rather than by Special Assessments. The Assessments for each year shall be established by the adoption of an annual budget by the Board. Copies of the budget shall be delivered to each Owner, although the delivery of a copy of the budget to each Owner shall not affect the liability of any Owner for any existing or future Assessments. Should the Board at any time determine, in the sole discretion of the Board, that the Assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium in any fiscal year (including a deficiency resulting from the nonpayment of Assessments by certain Owners) or in the event of a casualty loss, then the Board shall have the authority at any time and from time to time to levy an additional Assessment in an amount it shall deem to be necessary for that purpose. Upon purchasing a Unit, the Owner will deliver to the Association an amount equal to two (2) month's Assessments, which will be added to the replacement reserve.

D.1. Special Assessments. Special Assessments may be made by the Board at any time, and from time to time, to meet other needs or requirements of the Association and the Condominium including, but not limited to, costs of capital improvements. However, any Special Assessment of more than ten percent (10%) of the annual budget, whether in one sum or in total, during any calendar year (except for repair or replacement following casualty, as contemplated in Paragraph 14.B. (iv), as to which no Owner approval shall be necessary), shall not be levied without the prior approval of a majority of the Percentages of Common Interest Ownership of Owners present in person or by proxy at a meeting of Owners at which a quorum is present. Notice of Special Assessments shall be sent by the Association to each Owner. The due date and method and manner of payment of any Special Assessments shall be determined by the Board, provided, however, that such due date shall in no event be less than thirty (30) days subsequent to such notice.

2. Individual Purpose Assessments. In addition to Regular and Special Assessments as hereinabove provided for, the Association may, at any time, and from time to time, determine, levy and collect assessments against any one or more, but fewer than all, of the Units, for any matters of maintenance of repair, replacement or improvement reasonably applicable only to such Units (or Limited Common Elements appurtenant exclusively to such Units) and not all the Units, or to reimburse the Association for all or portions of the Association's insurance deductible applicable to such unit(s). Such individual purpose assessments are not subject to the ten percent (10%) limitation set forth above for Special Assessments and may be levied against individual Units to pay or reimburse the Association for any costs, expenses, fees, and other charges, incurred or reasonably anticipated to be incurred by the Association, for maintenance, repair, replacement and improvement, or any other purpose, of or with respect to the Unit against which such individual purpose assessment is levied which are not applicable to all the Units. The amounts determined, levied and assessed pursuant to this paragraph shall be due and payable as determined by the Association provided that written notice setting forth the amount of such individual purpose assessment for each Unit and the due date(s) for payment thereof shall be given to the Owners of the affected Units not less than thirty (30) days prior to the due date. All individual purpose assessments shall be considered Special Assessments for purposes of the other provisions of this Declaration besides this Paragraph 11.D.

E. Assessments as Capital Contributions. Assessments levied by the Association against each Owner pursuant to this Paragraph 11 which are expended on capital expenditures, or

which are set aside as a reserve for future repairs of improvements within the Condominium (whether or not such repairs or improvements would otherwise be considered capital in nature pursuant to Section 263 of the Internal Revenue Code of 1986, as amended, the "Code"), shall be treated as capital contributions by such Owner to the Association and shall be shown on the books of the Association as such. The Association may elect to be governed by the provisions of Section 528 of the Code for a taxable year by filing Form 1120-H (U. S. Income Tax Return for Home Owners Association) if such election would allow the Association to reduce its federal income tax liability for such taxable year. The provisions of this Paragraph 11.E. may be amended by a majority of the Board if, in the sole discretion of the Board, such action is necessary to conform to any change in the Code, or any Treasury regulation or ruling promulgated thereunder. Notwithstanding anything contained in this Declaration to the contrary, any amendment to this Paragraph 11.E. duly authorized by the Board shall not require the consent of any Owner or Mortgagee.

F. Computation and Apportionment of Assessments. Except as otherwise provided in this Declaration, all Assessments levied against Owners to cover expenses of the Association and the Condominium shall be computed and apportioned among and paid by Owners in accordance with the Percentage of Common Interest Ownership assigned to such Owner's Unit without increase or decrease for the existence of any rights with respect to the use, existence or lack of existence of Limited Common Elements appurtenant to such Unit. The amount of Common Expenses assessed against each Unit shall be a personal debt and Obligation of the Owner of said Unit at the time the Assessment is made, and the subsequent transfer of his or her ownership of said Unit shall not terminate the outstanding obligation. Assessments shall be due and payable at such times as the Association shall determine, commencing (as to Owners other than Declarant) on the date of delivery of a Deed to a Condominium Unit from Declarant to the purchaser thereof. From and after the termination of the period of Declarant control as set forth in Paragraph 8.H. Declarant shall bear all Assessments levied against Units owned by Declarant in accordance with the aggregate Percentage of Common Interest Ownership assigned thereto.

G. Payments by Declarant in Lieu of Assessments. From the date of the initial Assessment until the period of Declarant control terminates, as set forth in Paragraph 8.H. the Declarant shall periodically pay to the Association either (i) the amount equal to all Actual Operating Expenses (as hereinafter defined) of the Association, less the Actual Operating Expense portion of the Assessments paid by Owners other than Declarant, or (ii) the Common Expense liability allocated to each Unit owned by the Declarant. For purposes of this Paragraph 11.G., the term "Actual Operating Expenses" shall mean those expenses reasonably necessary for the normal maintenance and operation of the Condominium in order to provide the level and quality of services set forth in the budget initially prepared by Declarant and shall include capital expenditures, reserves, prepaid items, inventory items or similar expenses to the extent attributable to periods after such fiscal year, or any increase in the level and/or quality of services set forth in such initial budget prepared by Declarant.

H. Default for Failure to Pay Assessments. An Owner shall be in default for failure to pay a Regular Assessment or a Special Assessment if the same, or any part thereof, is not paid to the Association in full on or before ten (10) days after the due date for such payment, and such Owner shall be subject to a late fee as determined by the Board. In addition, Regular Assessments and Special Assessments in default shall bear interest at the lesser of the maximum lawful rate or the rate of eighteen percent (18%) per annum from the date due until paid. Each

Owner shall be, and remain, personally liable for the payment of all Regular Assessments and Special Assessments which may be levied against such Owner by the Association in accordance with the Condominium Documents, and any unpaid Regular Assessments and Special Assessments, together with late fees and accrued interest thereon, owed with respect to a Condominium Unit may, at the option of the Association, be collected out of the sale proceeds of such Condominium Unit in accordance with the Act. No successor in title to a Unit shall be deemed to have assumed personal liability for any obligation to pay Regular Assessments or Special Assessments which were due and owing at the time of conveyance to such successor unless such successor agreed to assume such obligation, but this shall not affect or impair the validity of the lien hereinafter provided for.

The personal obligation of the Unit Owner to pay the Assessments levied by the Association (Regular, Special, or otherwise) shall be and are secured by a continuing lien on the Unit and on the rents and insurance proceeds received by the Unit Owner relating to the Owner's Unit, such continuing lien being created and reserved herein in accordance with Section 82.113 of the Texas Property Code in favor of the Association, and being reserved by the Declarant and granted and assigned to the Association without recourse. The Association's lien for assessments is created by the recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of a lien shall be required.

The lien in favor of the Association may be enforced by power of sale as provided in Section 51.002 of the Texas Property Code, and the expenses incurred in connection therewith, including late fees, interest, costs and attorneys' fees, shall be chargeable to the Owner in default. In no event shall the Association foreclose a lien securing the payment of Assessments consisting solely of fines. Each Owner, by acceptance of the Deed to his or her Condominium Unit, agrees that the Association and its designated agents have the authority, right and power to enforce the above-described liens for Assessments by all legal methods available for the enforcement of liens, including nonjudicial foreclosure pursuant to Section 51.002 of the Texas Property Code, as amended. By acceptance of the Deed to his or her Condominium Unit, a Unit Owner grants to the Association a power of sale in connection with the Association's lien. By written resolution, the Board may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. The Association shall exercise its power of, sale pursuant to Section 51.002 (or its successor) of the Texas Property Code. Such liens shall be subordinate, secondary and inferior to: (i) assessments, liens and charges in favor of the State of Texas and any political subdivision thereof for real property taxes that are due and unpaid on such Condominium Unit; (ii) any First Mortgage filed for record prior to the date payment of such Assessment for Common Expenses became due and payable; and (iii) all liens securing any loan (including loans made by Declarant) made to a purchaser for any part of the purchase price of any Unit when such Unit is purchased from Declarant. The Board or Managing Agent may, but shall not be obligated to, elect to prepare and execute a notice of assessment (a "Notice of Assessment") which sets forth the amount of the unpaid indebtedness, the name of the Owner, and a description of the Condominium Unit, and may record the Notice of Assessment in the Real Property Records of Harris County, Texas. Notice of an unpaid Regular Assessment or Special Assessment and such lien in favor of the Association, may be recorded in the Official Records of Harris County, Texas.

The lien for Common Expenses herein provided for may be enforced by the Association by non-judicial foreclosure of and on the Condominium Unit owned by the defaulting Owner, without

prejudice and subject to the aforesaid prior and superior liens, in the same manner as nonjudicial foreclosures under mortgages on real property located in the State of Texas; provided, however, at any time prior to the foreclosure sale, the Owner of the Condominium Unit to be sold at such foreclosure sale may avoid foreclosure by paying all amounts due to the Association. No foreclosure suit or sale thereunder shall affect or impair any of the prior liens above mentioned. The Board of Directors or any person authorized by it, acting on behalf of the Association, shall have power to bid on the Condominium Unit being foreclosed at the foreclosure sale, and to acquire, hold, lease, mortgage or convey the same on behalf of the Association; provided, however, the Owner of the Condominium Unit purchased by the Association at the foreclosure sale may redeem the Condominium Unit within ninety (90) days after the date of the foreclosure sale in accordance with Section 82.113(g) of the Act. All funds realized from any foreclosure sale shall be applied first to the costs and expenses of filing and prosecuting the foreclosure, including all trustee's and attorneys' fees, and then towards payment of the indebtedness, and the remainder, if any, shall be paid over to the Owner or Owners as their interest may appear. Upon the foreclosure by the Association of the lien provided for herein, the Owner shall be deemed to constitute a Tenant at sufferance of the purchaser of the Unit at such foreclosure sale, and such purchaser shall be entitled to pursue the eviction of such Owner by virtue of forcible entry and detainer proceedings if such Owner fails or refuses to vacate the Unit upon demand. In the event the proceeds realized from the foreclosure sale, applied as aforesaid, shall be insufficient to pay off and discharge the whole amount of the assessments sued on, then the purchaser acquiring title to such Condominium Unit at such foreclosure sale, whoever he or she may be, other than the Owner sued, shall not be liable for the deficiency, but such deficiency shall be deemed a Common Expense, collectible from all Owners, including the purchaser at the foreclosure sale, on a pro-rata basis as in the case of other Common Expenses. The defaulting Owner shall remain personally liable to the other Owners paying such deficiency, and the Association may pursue recovery of such deficiencies from the defaulting Owner.

I. Additional Remedies. The Association may, in addition to its rights under Paragraph 11.11. above and the Act, enforce collection of delinquent Assessments by suit at law for a money judgment, and the expenses incurred in collecting unpaid Assessments, including interest, costs and attorneys' fees shall be chargeable to the Owner in default. The Board may resolve that an Owner in default shall not be entitled to vote at any meeting of the Association so long as such default is in existence, unless otherwise provided in the Act.

J. No Exemptions From Liability for Common Expenses. No Owner may be exempt from liability for his or her contribution toward the Common Expenses of the Association and the Condominium by waiver of the use or enjoyment of any of the Common Elements or any part thereof, by reason of any grievance against the Association, Declarant, or any other Owner, or by the abandonment of such Owner's Condominium Unit or his or her interest therein.

K. Statement of Assessments. The Association or its representative shall, upon payment to the Association of a reasonable fee as set by the Board from time to time, furnish to any prospective purchaser or Mortgagee of any Unit, at the written request of the Owner, a written statement as to the amount of the assessments for Common Expense which have become due and are unpaid up to a given date with respect to the Unit to be sold or mortgaged; and, in the case of a sale, the purchaser shall not be liable nor shall the Unit purchased be subject to any lien for any unpaid assessment which has become due and is not shown on such statement for the period of time covered thereby; however, the selling Owner shall remain liable for same and in

case of his or her failure or refusal to pay, then the same shall be collectible from all other Owners on a pro-rata basis in proportion to their ownership interest in the Common Elements, and they shall have recourse against the selling Owner; but in the event of a Mortgagee, then the unpaid assessments not shown on the statement for the period of time covered thereby shall remain the obligation of the Owner mortgaging his or her Unit, but the assessment liens securing same as provided for in this Declaration shall be and remain inferior and secondary to the mortgage and liens held by the Mortgagee to whom or for whose information the statement was furnished.

L. Common Expense Fund. The Common Expense Fund shall be based upon the aggregate sum which the Board shall from time to time determine is to be paid by all of the Owners (including Declarant) to pay the estimated Common Expenses.

M. Failure to Provide Notice of Regular Assessments. In the event of a failure of the Board to issue the annual notice setting forth the amount of the Regular Assessments, the Regular Assessments then in effect shall continue until the Board issues a new notice of Regular Assessments, and said failure shall not be deemed a waiver of any of the provisions of this Paragraph 11 nor shall it operate to release any Owner from his or her obligations to pay the assessments provided for hereunder.

N. Notice to Owners. Notwithstanding anything to the contrary contained in this Declaration, before the Association may charge an Owner for property damage for which such Owner is liable, or levy a fine for violation of this Declaration, the Bylaws or Rules and Regulations, the Association shall give such Owner a written notice that:

- (i) describes the violation or property damage and states the amount of the proposed fine or damage charge;
- (ii) states that not later than the 30th day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or damage charge; and
- (iii) allows the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding year.

The above described notice may be given by the Association delivering a copy of the notice to an occupant of the Unit. In addition, the Association shall give notice of a levied fine or damage charges to the Owner within thirty (30) days after the date of levy.

12. Obligations of Owners and Owner Action. Without limiting the obligations of an Owner, each Owner shall: (i) pay all Assessments, late fees, interest, and other charges properly levied by the Association against the Owner or the Owner's Unit, and shall pay all Regular Assessments without demand by the Association; (ii) comply with this Declaration, the Bylaws, the Rules and Regulations, and any amendments thereto; (iii) pay for damage to the Condominium caused by the negligence or willful misconduct of the Owner, an occupant of the Owner's Unit, or the Owner's or occupant's family, guests, employees, contractors, agents or invitees; and (iv) be liable to the Association for violations of the Declaration, the Bylaws, the Rules and Regulations, and any amendments thereto, by the Owner, an occupant of the Owner's

Unit, or the Owner's or occupant's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorneys' fees, whether or not suit is filed.

Without limiting the other legal rights of any Owner or the Association, legal action may be brought by the Association, in its sole discretion, on behalf of two (2) or more Owners as their respective interests may appear with respect to any cause of action relating to the Common Elements appurtenant to more than one Condominium Unit. All costs incurred by the Association as a result of such legal action shall be borne in their entirety by the Association.

13. Insurance.

A. Owner's Insurance. Each Owner shall be responsible, at his or her cost and expense, for his or her own personal insurance on the contents of his or her Unit (specifically including glass and windows appurtenant to the Unit) and his or her additions and improvements thereto, and his or her decorations and furnishings and personal property therein to the extent not covered by the insurance obtained by the Association, as well as his or her personal liability to the extent not covered by the liability insurance for all of the Owners which may be obtained by the Association as a Common Expense;

B. Association's Insurance. The Association shall purchase and maintain policies of insurance and fidelity bond coverage in accordance with the requirements of the Act and the requirements of the Federal National Mortgage Association, as they may be amended from time to time. To the extent not inconsistent with the foregoing, the Association shall obtain and continuously keep in effect, to the extent reasonably available, the Master Policy of fire and extended coverage, vandalism, malicious mischief and liability insurance, and, if required by law or deemed necessary or desirable by the Board, worker's compensation insurance, with respect to the Condominium and the Association's administration thereof in accordance with the following provisions:

(i) Parties Covered. The Master Policy shall be purchased by the Association for the benefit of the Association, Managing Agent (if any), and each and every Owner and their respective Mortgagees, as their interests may appear (subject to the provisions of the Condominium Documents and the Act), the cost of which shall be a Common Expense, and provision shall be made for the issuance of appropriate mortgagee endorsements to Mortgagees.

(ii) Coverage.

(a) To the extent such insurance is reasonably available, the Buildings and all Common Elements shall be insured against fire, vandalism and malicious mischief, and other perils covered by a standard extended coverage endorsement (with appropriate endorsement to cover fixtures, installations or additions comprising a part of the Buildings within the unfinished interior surfaces of the perimeter walls, floors and ceilings of individual Units initially installed, or replacements thereof, in accordance with the original plans and specifications for the Condominium, specifically referring to and including the interior walls of each Unit), in an amount equal to the replacement cost thereof, excluding the

costs of excavations, foundations and footings, as determined annually by the Board. The Board may obtain an appraisal in determining insurable value and the cost thereof shall be an expense of the Association. The Association may, in its sole discretion, elect to carry insurance to cover such other perils as from time to time shall be customarily covered with respect to Buildings and improvements similar in construction, location and use.

(b) The Association shall also maintain, to the extent reasonably available, commercial general liability insurance, including medical payments insurance, in an amount determined by the Board of Directors, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and shall contain, if reasonably available, cross-liability endorsements or appropriate provisions for the benefit of Owners, individually and as a group, Directors, and Managing Agent (if any) insuring each insured against liability to each other insured.

(c) If the property insurance and/or the liability insurance described above is not reasonably available, the Association shall cause notice of that fact to be delivered or mailed to all Owners and Mortgagees.

(d) The property and liability insurance policies obtained by the Association shall provide that: (i) each Owner is an insured Person under the policy with respect to liability arising out of such Owner's Percentage of Common Interest Ownership or membership in the Association; (ii) the insurer waives its right to subrogation under the policy against an Owner or the Association; (iii) no action or omission of an Owner, unless within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; (iv) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy shall provide the primary insurance; and (v) the insurer issuing the policy may not cancel or refuse to renew the policy less than thirty (30) days after written notice of the proposed cancellation or non-renewal has been mailed to the Association.

(e) The Association shall also carry, if available, fidelity coverage against dishonest acts on the part of Directors, Owners, the Managing Agent (if any), security officers, and any other person (including volunteers, with an appropriate endorsement if required) handling funds belonging to or administered by the Association. Such fidelity coverage shall be in the amount of not less than \$100,000.00.

(iii) Premiums. All premiums upon insurance purchased by the Association shall be included in the Association's budget in accordance with Paragraph 11.C. hereof, except that the amount of increase over such premiums occasioned by the use, misuse, occupancy or abandonment of a Unit or the Common Elements by an Owner shall be assessed only against such Owner.

(iv) **Proceeds of Insurance.** Proceeds of all insurance policies owned by the Association shall be payable to the Association, shall be deposited by the Association in a federally insured bank, shall be held in a separate account and shall be distributed to the Association, Owners and their Mortgagees (subject to the provisions of the Condominium Documents and the Act) as their interests may appear; provided, however, whenever repair or reconstruction of the Condominium shall be required as provided in Paragraph 14 hereof, the proceeds of any insurance received by the Association as a result of any loss requiring repair or reconstruction under this Declaration shall be administered by the Association and shall be applied to such repair or reconstruction.

(v) **Appointment of Attorney-in-Fact.** Each Owner, by acceptance of a deed or other instrument of conveyance from Declarant or from any Owner or grantor resulting in ownership of a Condominium Unit, shall be deemed to appoint the Association as his or her true and lawful attorney-in-fact (which shall be deemed to be an irrevocable power of attorney coupled with an interest and not voidable due to the incapacity or disability of an Owner) to act in connection with all matters concerning the maintenance of the Master Policy and the destruction, repair or obsolescence of the Condominium, in whole or in part. Without limiting the generality of the foregoing, the Association, by and through its President or Vice President, shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds, to institute and prosecute litigation or arbitration, to pay all costs associated with its activities as Common Expenses (to the extent the proceeds received from such insurance are not adequate to pay such costs), to administer the distribution of such proceeds in connection with any reconstruction or repair, to distribute any remaining proceeds to Owners and their Mortgagees (subject to the provisions of the Condominium Documents and the Act) as their interests may appear, to execute releases of liability, and to execute all documents and to do all things on behalf of the Owners and the Condominium as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters (other than exercising any voting rights in determining whether to repair or reconstruct). The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit (except to the extent available by endorsement as herein provided) or covering the liability of any Owner for occurrences not caused by or connected with the Association's operation, maintenance or use of the Condominium.

(vi) **Priority as to Proceeds.** Notwithstanding anything contained herein to the contrary, no provision contained herein or in the Condominium Documents shall give an Owner or any other party priority over any Mortgagee with respect to the distribution of proceeds of insurance to which such Owner or other party would not otherwise be entitled.

(vii) **Waiver of Subrogation.** The Association and the Owners shall use their best efforts to see that all insurance carried by an Owner or the Association shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against Owners or the Association and the respective tenants, servants, agents, and guests of Owners or the Association, as the case may be, and the Association and the Owners, by their acceptance or recordation of a Deed, hereby waive any and all claims

and rights of subrogation against each other to the extent of any damage or injury for which insurance is required to be maintained under this Declaration.

14. Termination of Condominium; Reconstruction or Repair; Condemnation

A. Termination of Condominium Project.

(i) The Condominium shall continue indefinitely unless and until it is terminated as provided in this Declaration or by agreement of the Owners holding at least eighty percent (80%) of the votes in the Association (including those held by the Declarant, or successor to Declarant), and First Mortgagees holding eighty percent (80%) of the First Mortgages (based on one vote for each First Mortgage held). The agreement of the Owners and First Mortgagees to terminate (and, if the Project is to be sold, the terms of sale) must be evidenced by their execution of a Termination Agreement (or a ratification thereof) in the same manner as a deed, by the requisite number of Owners and First Mortgagees. The Termination Agreement and all ratification thereof must be recorded in the Real Property Records of the County of Harris and is effective only upon recordation. After the recording of the Termination Agreement, the Project may be sold, and the Association, on behalf of the Owners, may contract for such sale, on the terms set forth in the Termination Notice. The Association has all power necessary and appropriate to effect the sale and until the sale has concluded and the proceeds have been distributed, the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to the Owners and lienholders as their interest may appear, in accordance with the provisions set forth below. Unless otherwise specified in the Termination Agreement, until title to the Project has been transferred pursuant to a sale, each Owner and its successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Owner and the Owner's successors in interest remain liable for all assessments and other obligations imposed upon the Owners by the Act or this Declaration. Following termination of the Condominium, the proceeds of any sale of real estate, together with any insurance proceeds (if the termination occurs in connection with a damage or destruction) and the assets of the Association are held by the Association as trustee for the Owners and the holders of the liens on the Condominium Units as their interest may appear. If the Project is not to be sold following termination, on termination title to the Project vests in the Owners as tenants in common in proportion to their respective interests, and liens on the Units shift accordingly. While the tenancy in common exists, an Owner and the Owner's successors in interest have an exclusive right to occupy the portion of the Project that formerly constituted the Owner's Unit.

(ii) The respective interests of the Owners are as follows:

(a) except as provided in subparagraph (b) immediately below, the respective interests of the Owners are the fair market values of their Units, interest in the General Common Elements, and any Limited Common Elements immediately before termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within 30 days after distribution by Owners holding at least 25% of the total votes in the Association.

The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Condominium Unit by the fair market value of all Condominium Units and Common Elements;

(b) if any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the proportionate interest of each Owner shall be their Common Interest Ownership immediately before termination.

(iii) The proceeds available for distribution to the holders of interests in the Condominium Units after a termination shall be allocated to each Condominium Unit in accordance with its proportionate interest as provided above and each Condominium Unit's share of such proceeds shall be deposited into a separate account identified by the Condominium Unit designation and the name of the Owner and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of such account, without contribution from one account to another, toward payment of the liens encumbering the Condominium Unit represented by such separate account, in the following order: (a) for the payment of taxes and special assessment liens in favor of any assessing entity; (b) for the payment of any Association common expense assessments which take priority over the lien of a First Mortgage pursuant to Paragraph 11.H. of this Declaration and the Act; (c) for the payment of the lien of any First Mortgage; (d) for the payment of unpaid Association common expense assessments, other assessments, charges and fees, and all cost, expenses and fees incurred by the Association, including customary expenses of sale; (e) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (f) the balance remaining, if any, shall be paid to the Owner(s) of the Condominium Unit.

B. Damage or Destruction. "Repair and Reconstruction" of the improvements, as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Condominium Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration, or replacement, in accordance with the provisions hereinafter set forth:

(i) Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds will be paid to the Association or an insurance trustee designated for such purpose and not to the holder of any Security Interest. The insurance trustee or the Association shall hold such insurance proceeds in trust for the Owners and lienholders as their interest may appear. Subject to the provisions of subparagraph (ii) immediately below, the proceeds must be disbursed first to the repair or restoration of the damaged property, and then to the Association. Owners and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated in accordance with Paragraph 14.A., in either of which events the surplus shall be distributed as provided in Paragraph

14.A.iii. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submission of claims, and such other matters of claims adjustment. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvements. Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

(ii) Any portion of the Project for which insurance is required under this Declaration must be repaired or replaced promptly by the Association unless (a) the Condominium Project is terminated in accordance with Paragraph 14.A., in which case the provisions of that Paragraph apply; or (b) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety.

(iii) Estimates. As soon as possible after the occurrence of a casualty which causes damage to any part of the Condominium for which the Association has insurance coverage, the Association shall obtain reliable and detailed cost estimates of the following:

(a) The cost of restoring all damage caused by the casualty to the Common Elements (collectively, the "Common Element Costs"); and

(b) The cost of restoring that part of the damage caused by the Casualty to each Unit which is or would be covered by insurance held by the Association, without regard to the policy limits of such insurance (collectively, the "Unit Costs").

(iv) If the insurance proceeds are insufficient to repair and reconstruct the improvements, 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 a Special Assessment. Such Special Assessment (to be known as an "Allocation Assessment") shall be assessed against all Condominium Units in accordance with Paragraph 11.D. hereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid Allocation Assessment. Notwithstanding the foregoing, the Association shall have authority to assess negligent Unit Owners causing any loss all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of repair and reconstruction, as further set forth in the second sentence of Paragraph 14.B.(v).

(v) Owner's Responsibilities. Each Owner shall be responsible for the reconstruction, repair or replacement of the interior of his or her Unit, including, but not limited to, furniture, furnishings, floor coverings, wall coverings, window shades, draperies, interior walls, decorative light fixtures, all appliances located therein, and other items of personal property within the Unit, unless such item(s) are covered by the Association's insurance policy. Each Owner shall also be responsible for the costs not otherwise covered by insurance carried by such Owner or the Association for any reconstruction, repair or replacement of any portion of the Condominium necessitated by his or her negligence or

misuse, or the negligence or misuse by his or her family, tenants, guests, agents, servants, employees or contractors, as determined by the Board, in its sole discretion (whether or not a Special Assessment is made against other Owners initially to cover such costs). In the event damage to all or any part of the interior of an Owner's Unit is covered by insurance held by the Association for the benefit of such Owner, then such Owner shall, subject to the provisions of subsection (iv) immediately above, begin construction or repair of such damage upon receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association and such Unit's First Mortgagee to supervise, approve or disapprove such reconstruction or repair during the course thereof. In the event damage to all or any part of the interior of any Owner's Unit is not covered by insurance held by the Association for the benefit, of such Owner, then such Owner shall, subject to the provisions of subsection (iv) immediately above, begin reconstruction or repair of his Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof.

C. **Obsolescence.** Owners holding at least eighty percent (80%) of the votes in the Association or First Mortgagees holding eighty percent (80%) of the First Mortgages (based on one vote for each First Mortgage held) may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction thereof. If a plan for renewal or reconstruction is adopted, notice of such plan shall be recorded in Real Property Records of Harris County, Texas, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid Common Expense assessment for the renewal and reconstruction of the Common Elements shall be a debt of each Owner and a lien on its Condominium Unit, and may be enforced and collected as provided in Paragraph 11 hereof.

D. **Condemnation.** If at any time during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Condominium shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Paragraph 14.D. shall apply:

(i) All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award" shall be payable to the Association.

(ii) In the event that the entire Condominium is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board the same as if there had been a termination of the Condominium Project under Paragraph 14.A.; provided, however, that if a standard different from the value of the Condominium as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Paragraph 14.A. hereof.

(iii) Subject to the rights of First Mortgagees provided in this Declaration, in the event that less than the entire Condominium is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: As soon as practicable, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (a) the total amount allocated to taking of or injury to the Common Elements (less any portion used for restoration or repair of the remaining Common Elements) shall be apportioned among the Owners in accordance with the Common Interest Ownership assigned to each Unit (but the portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition); (b) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned and which in the sole judgment of the Association were damaged; (iii) the respective amounts allocated to the taking of or damage to a particular Unit, and to the improvements an Owner has made within his Condominium Unit, shall be apportioned to the particular Unit involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by the judicial decree. Notwithstanding anything to the contrary contained in this Declaration except the preceding sentence, the allocation of the Condemnation Award to each affected Unit shall be based on the comparative values of the affected Units as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including, but not limited to, recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Paragraph 14.8. hereof.

(iv) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 14.B. hereof

(v) If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the Owner(s) thereof shall automatically cease to be a member(s) of the Association, shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same and the award will include compensation to the Owner for that Unit and its undivided interest in the Common Elements whether or not any Common Elements are acquired. The Condemnation Award as to each such completely taken Condominium Unit shall be paid into a separate account and disbursed, as soon as practicable, to the Owner of such Condominium Unit and its First Mortgagee in the same manner as provided in Paragraph 14.A. hereof. Upon acquisition, unless the decree otherwise provides, that Unit's undivided interest in the Common Elements shall be reallocated to the remaining Units in proportion to the respective Common Elements of

those Units before the taking. Any remnant of a Unit remaining after a part of a Unit is taken pursuant to this subsection (v) is thereafter a Common Element.

(vi) Except as provided in subsection (v) above, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Unit and its undivided interest in the Common Elements whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, the Unit's interest in the Common Elements shall be reduced and determined by dividing the square footage of the remainder of the Unit by the total square footage of all Units in the Condominium after the taking, but the Unit's vote and share of assessments for common expenses shall remain the same.

(vii) The reallocation of Common Elements pursuant to Section 14.D. shall be confirmed by an Amendment to this Declaration prepared, executed and recorded by the Association.

E. Notice to First Mortgagees. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, any First Mortgagee shall be entitled to timely written notice of any such damage or destruction at the address appearing in the Record of Mortgages, and no provision hereof shall entitle an Owner or any other party to the priority granted to such First Mortgagee with respect to the distribution of any insurance proceeds attributable thereto. In the event any Unit or portion thereof, or the Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, any First Mortgagee shall be entitled to timely written notice of any such proceeding or proposed acquisition at the address appearing in the Record of Mortgages, and no provision hereof shall entitle an Owner or any other party to the priority granted to such First Mortgagee with respect to the distribution of the proceeds of any award or settlement attributable thereto.

15. **Restrictions on Use.** The Board may and is authorized to, from time to time, institute, invoke, amend, and terminate nondiscriminatory Rules and Regulations which the Board may deem necessary or convenient to insure compliance with the general guidelines of this Declaration.

In that regard, the following restrictions, covenants and conditions are placed upon each Unit in the Condominium as a general plan or scheme of restrictions for the benefit of each Unit.

A. Permitted Uses of Units.

(i) Units. After the initial sale or transfer by Declarant, the primary use of each Unit shall be single-family residence purposes, with occupancy not to exceed two (2) adult persons per bedroom, unless higher occupancy is mandated by public agencies that enforce compliance with the familial status protection of the Fair Housing Act; provided, however, the Owner, Owners or tenants of a Unit may use such Unit for a limited business purpose consistent with the Rules and Regulations. In addition, consultation with clients or customers at a Unit shall not be permitted. Notwithstanding anything contained to the contrary in this Paragraph 15.A., the use of a Unit for the maintenance of a personal or professional library; for the keeping of personal, business or professional

records of accounts; or for the handling of personal business or professional telephone calls or correspondence shall not be deemed to be a violation of these provisions.

- (ii) Notwithstanding the foregoing, so long as Declarant owns any of the Units which are for sale, Declarant and its employees, representatives and agents may maintain establish or relocate business, leasing and/or sales offices, sales models and other sales facilities within any Unit, (or portion thereof) of the Condominium or within any Limited or Common Element as Declarant shall deem appropriate.

B. Alterations, Additions and Improvements. No alterations of any portion of the Common Elements or additions or improvements thereon shall be made by any Owner without the prior written approval of the Board of Directors or the Association. No Owner shall make any structural modification or substantial improvement to or alteration of or to his or her Unit (including, without limitation, the balconies, parking and storage spaces and other limited common elements), except in a manner authorized in writing by the Board or the Association. In that respect, to the extent deemed necessary by the Board, all payment and performance bonds required by the Association or Declarant, names of all contractors, subcontractors and other parties which will be involved therewith, plans, specifications, mechanical and engineering drawings and renderings for any proposed structural modification or substantial alteration, improvement to or modification of a Unit must be submitted, no less than thirty (30) days prior to the date of commencement of such work, by such Owner to the Board for review and approval. The Board may impose such specifications and requirements as it may reasonably deem necessary in connection therewith, including, without limitation, the right to require (but having no duty to so require) that the Owner provide assurances that the alterations, additions, improvements, and modifications comply with all applicable governmental requirements. Further, the Board has the right to approve or deny any of such alterations, additions, modifications or improvements, or the contractors, subcontractors or other personnel performing same, so that, among other reasons, the quality, integrity and safety of the Condominium can be promoted and in order to ensure that the alterations, additions, improvements and modifications (i) are consistent and compatible with the existing Buildings, and (ii) do not encourage or involve a violation of the Condominium Documents. In the event any Owner constructs or causes to be constructed any alteration, addition, improvement or other modification to his or her Unit which encroaches on any Common Element or any other Unit, the Board may require such Owner, at his or her sole cost and expense, to remove such encroachment and to restore and repair any damage caused by same or attributable thereto. No approval by the Board of any such alterations, additions, modifications or improvements, or the plans, specifications, mechanical and engineering drawings and renderings, or the contractors, subcontractors or other personnel performing same, will be or constitute any representation or warranty by the Board as to the adequacy or sufficiency thereof, or of the compliance of same with any applicable laws, codes or ordinances. All alterations, additions, modifications or improvements must be performed in a prompt, diligent and professional manner, must comply with the plans, specifications, mechanical and engineering drawings and renderings submitted to the Board (with any requisite changes, additions, modifications or alterations thereto, which may be imposed by the Board), and must comply with all applicable codes, ordinances, laws and regulations applicable thereto.

No Owner shall erect antennae, aerials, or satellite dish(es), in the windows of a Unit or on any balcony thereof except as expressly provided herein. Further, no Owner shall erect or

place any awnings or other exterior attachments, or place any reflective material in the windows of a Unit or on the Balcony thereof except as expressly provided herein. No Unit shall be altered, remodeled, subdivided or converted into more than one dwelling unit. All draperies, blinds or shutters installed in a Unit shall be subject to the Rules and Regulations. No Owner shall install colored lights or light fixtures presenting the same effect which are visible from outside the Buildings. No Owner shall make any alteration or modification involving plumbing, electricity and fire protection systems, and/or heating, ventilating, air conditioning systems, or the mechanical or structural systems within such Owner's Unit or the Common Elements, without first ensuring that any proposed alteration or modification complies with all applicable governmental requirements, submitting plans and specifications therefor and the name, address and telephone number of any contractor to the Association and securing the prior written approval of the Association. Such prior written approval is required to ensure that the alterations or modifications: (i) are consistent and compatible with the existing Buildings, and (ii) do not encourage or involve a violation of the Condominium Documents. No objects or things shall be stored on a balcony and no item shall be, placed temporarily on or hung from a window or balcony which shall impair the uniform appearance of the Buildings. No outside clothes or drying lines shall be installed or permitted to be installed from a window or balcony or the Common Elements. No Owner may alter the floor or wall assembly, without approval of the Board and, in the Board's sole discretion; certification by a qualified engineer that such alternative floor system has equal or greater sound transmission mitigation properties (as measured by the STC Rating of the alternative floor or wall system). Any wood, tile or other hard surface flooring within a Unit shall have such sub-flooring as the Association may require to ensure that such wood, tile or other hard surface flooring shall not create a nuisance or disturbance to other Owners.

C. Leases.

(i) Rules and Regulations for Leasing.

Prior to the leasing of any Unit, each Owner must comply with the provisions of this Section

(ii) Form and Content of Proposed Lease Agreements.

Any and all lease or rental agreements must be in writing.

Units may be leased only in their entirety; no fraction or portion may be leased.

No transient lessee may be accommodated therein.

No subleases or subleasing shall be allowed.

Each Lease shall specify, by name, those persons intending to occupy the unit pursuant to the Lease.

All leases must be for a term not less than one (1) year.

Maximum occupancy requirements are two (2) persons per bedroom, unless otherwise mandated by law (See Paragraph 15.A. references to Fair Housing Act).

Any lease of a Unit in the Condominium Project shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees the if such language is not expressly contained therein, then, such language shall be incorporated into such lease by virtue of the existence of this covenant. Any lessee, by occupancy in a Unit, agrees to the applicability of this covenant and incorporation of this covenant and the following language into the lease:

(a) Lessee acknowledges that certain promises made to Lessor are made for the benefit of 118 McGowen Condominium Association, Inc. (the "Association") relating to Lessee's compliance with the Declaration of Condominium ("Declaration"), Bylaws of the Association ("Bylaws") and Rules and Regulations of the Association ("Rules"). In order to enforce the provisions of this Agreement made for the Association's benefit, Lessee agrees and acknowledges, and Lessor authorizes, that in the event of Lessee's breach or violation of any of the provisions of the Declaration, Bylaws, or Rules, as they may be amended from time to time, such breach shall constitute a breach or violation of the Lease and the Lessee shall be in default thereunder, and the Association shall be authorized (but not obligated), without joinder or authorization from the Owner of the Unit, to take any and all action against the Lessee available at law or equity, including, but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by the Lessee, including the eviction of the Lessee by forcible entry and detainer action brought by the Association. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

(b) Lessee shall comply strictly with all provisions of the Declaration, By-Laws and Rules as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests and in the case of a Commercial Unit, his, her or its employees, vendors, contractors, patrons and invitees in order to assure compliance with the foregoing and. shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by Lessee or any of the parties above described for whose conduct Lessee is responsible to control of any provision of the Declaration, ByLaws or Rules shall constitute a default under this lease.

It shall be the obligation of the Owner to provide the lessee of such Owner's unit with copies of the Declaration, Bylaws and Rules prior to entry into any lease covering such unit; such copies to be made available to such Owners and Lessees for such purpose by the Association for reproduction cost.

(iii) Remedies of the Association.

The Owner of the Unit shall be jointly and severally liable with the lessee of his Unit for any and all violations of the Declaration, Bylaws and Rules, for any fines levied against any such lessee by the Association, for any attorneys fees, costs, court costs, or other amounts incurred as a result of any violation and for any damages to the

Condominium including, without limitation, the Common Elements or Buildings, caused by such lessee. Provided, however, that an Owner shall not be liable for, or responsible for any criminal acts of such lessee.

Further, in the event the Association proceeds to evict a lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Unit and the Owner thereof, such being deemed hereby as an expense which benefits the leased Unit and the owner thereof.

The Association shall have the authority to enforce any violations of the Declaration, or Rules and Regulations by appropriate judicial relief, including injunctions and suit for damages. In any such lawsuit, the Association shall be entitled to reasonable attorneys' fees and costs.

D. Offensive Activities. No unlawful, noxious or offensive activity shall be conducted or carried on in any Unit, or upon the Common Elements or anywhere else in the Condominium, nor shall anything be done therein or thereon which may be or become an annoyance or a nuisance to other Owners or the neighborhood or cause unreasonable noise or disturbance to others, or which shall interfere in any manner with any Owner's quiet enjoyment of his or her Unit. Provided, however, it shall be taken into account in determining any violation of this provision, that due to its location in an urban setting in downtown Houston, overall noise levels will be higher. No Owner shall do or permit anything to be done or keep anything or permit anything to be kept in his or her Unit or on the Common Elements that would increase the rate of or invalidate the coverage afforded by insurance on the Condominium. No Owner shall store any environmentally hazardous, dangerous, explosive or inflammable liquids or other like materials either in his or her Unit or upon the Common Elements.

E. Signage. No signs or other advertising devices which are visible from the exterior of any Unit or upon the Common Elements shall be displayed on any portion of the Condominium or any portion of any Unit, including "For Sale" signs, except signs erected by the Association identifying all or a portion of the Condominium or providing information to Owners or their invitees; provided, however, that nothing contained herein shall be deemed to prohibit or restrict in any manner the right of Declarant to construct and maintain such promotional signs and other sales aids on any portion of the Condominium (other than Units which have been sold) which, in the reasonable judgment of Declarant are necessary or helpful for its sales program

F. Pets/Animals. An Owner may keep up to two (2) small domestic animals such as birds, fish, dogs and cats within a Unit. Household dogs shall not exceed fifty (50) pounds each without the written approval of the Association. Such animals shall be registered with the Association in such manner as it shall require, may not be kept or bred for any commercial purpose and shall have the care and restraint necessary so as not to be obnoxious or offensive on account of noise, odor or unsanitary condition. No animals shall remain on Balconies, if any. No savage or dangerous animal shall be kept in the Buildings or any Unit. Any Owner who causes any animal to be brought or kept upon the premises of the Condominium shall always keep such animal on a leash (if not within such Owner's Unit), and shall indemnify and hold the Association harmless from and against any loss, damage, cost or liability which the Association may sustain as a result of the presence of such animal on the premises, whether or not the Association has given its permission. The Association may levy a fine, not to exceed One

Hundred and No/100 Dollars (\$100.00) per occurrence or per day (as the case may be), for violations of this provision. Notwithstanding the generality of the foregoing, if after (i) three (3) violations of this provision, (ii) ten (10) days' prior written notice to the Owner of such animal, if such Owner can be located, and (iii) an opportunity for such Owner to have a hearing before the Board, such animal is found to be in violation of this Paragraph 15.F. the Owner of such animal shall remove such animal from the Condominium, failing which such animal may be taken from such Owner and given to the Society for the Prevention of Cruelty to Animals of Harris County, Texas. If such Owner cannot be located, such animal may be given to the Society for the Prevention of Cruelty to Animals of Harris County, Texas. Should the Board elect to disallow all keeping of pets in any Unit or elect to further restrict or expand the rights and obligations set forth herein regarding pets, it may do so by enacting Rules outlining such changes and conditions.

G. Storage/Refuse/Obstructions. The Common Elements shall not be used for storage of supplies, personal property, garbage or refuse of any kind (except common garbage receptacles which may from time to time be placed upon the Common Elements at the discretion of the Declarant or the Board), nor shall the Common Elements carports or balconies be used in any way for the drying, shaking or airing of clothing or other items. Drives shall not be obstructed in any way nor shall unauthorized persons or animals play therein or thereon or use such areas for other than their intended purposes. In general, no activities shall be conducted nor conditions maintained by any Owner either in his or her Unit or upon the Common Elements which detract from the uniform appearance of the Condominium.

H. Maintenance. Each Owner shall maintain his or her Unit and any Limited Common Elements appurtenant thereto in a clean, safe and sanitary condition. Each Owner shall also use due care to avoid damaging any of the Common Elements, including, but not limited to, telephone, water, gas, cable, television, plumbing, power or other utility systems throughout the Condominium and each Owner shall be responsible for his or her negligence or misuse of any of the Common Elements or his or her own facilities resulting in damage to the Common Elements.

I. Compliance with Laws. Each Owner shall promptly and fully comply with all applicable laws, rules, ordinances, statutes, regulations, or requirements or any governmental agency or authority with respect to the occupancy and use of his or her Unit.

J. No Right of First Refusal. Any Owner (including Declarant) may sell, transfer or otherwise convey such Owner's Condominium Unit free from, and such sale, transfer or other conveyance shall not be subject to, any right of first refusal or any similar restriction in favor of the Association.

K. Vehicles. Vehicles not in operating condition shall not be parked, repaired or stored (on blocks or otherwise) upon the Condominium. Without limitation, vehicles shall be deemed not to be in operating condition if same have expired or missing license tags and/or inspection stickers, or are incapable of being driven due to mechanical condition of any kind. Boats, trailers, campers, motor homes, recreational vehicles, commercial vehicles, trucks (other than standard-size pick-up trucks), and the like shall not be parked on the Condominium. No noisy or smoky vehicles may be operated on the Condominium. No motorcycles without mufflers shall be permitted in the Condominium. No parking space shall be converted for living, recreational or business purposes, nor shall anything be stored in any parking space. Each Owner

shall require his or her construction and household employees, including cleaning and maintenance personnel, to park in the parking spaces which are allocated to such Owner, unless Owner's personal vehicle occupies such parking space, in which event the Owner will require the employees to park in the area, if any, designated by the Association.

L. Fireworks. The use or discharge of firearms, firecrackers or fireworks is expressly prohibited within or from the Condominium.

M. Guest Parking. Parking for guests of any Owner or Unit occupant shall not be within the Common Elements of the Condominium.

N. Business and Sales Office. None of the restrictions contained in this Paragraph 15 shall apply to the business, management, sales and/or leasing office or offices, sales and/or leasing model Units, other commercial activities, or signs or billboards, if any, of Declarant during the sales and/or leasing period of the Condominium (it being understood that Declarant may maintain a sales/leasing office in the lobby of the Buildings or elsewhere on the Condominium and one or more sales/leasing model Units in the Condominium during such period and the number, size, location and relocation of such offices and models shall be entirely within the discretion of Declarant) or of the Association in furtherance of its power and purposes set forth herein and in the Condominium Documents, as the same may be amended from time to time, including, without limitation, the power of the Association to own a Unit for the use and enjoyment of a resident manager of the Condominium.

O. Garbage, Trash and Rubbish. All garbage, trash, rubbish, and other waste shall be regularly removed from the Condominium and shall not be allowed to accumulate thereon. No garbage, trash, rubbish, waste, or waste bins or receptacles therefor shall be permitted to remain on any portion of the Common Elements, except on those days specifically scheduled for collection thereof and in areas specifically designated therefor. All garbage, trash, rubbish, and other waste shall be kept only in sanitary containers. Notwithstanding anything to the contrary contained in this Declaration, Owner and Owner's contractors, subcontractors, agents, employees and other parties involved in any construction to or on such Owner's Unit shall confirm that any and all refuse, waste, trash, garbage, rubbish, remains, scraps, and other materials and supplies which are brought onto the Condominium or result from the construction by such parties, or any of them, is removed, at such Owner's expense, at such times, manners and locations as may be required by the Association or the Managing Agent (if any).

16. Sale and Ownership.

A. Condominium. The elements of each Condominium Unit shall be inseparable, and may be sold, assigned, leased, devised or encumbered only as a single Condominium Unit.

B. Deed/Description of Unit. Every deed, lease, mortgage, deed of trust, will or other instrument may legally describe a Condominium Unit by its identifying Unit number followed by the words "118 McGowen Condominium," and reference to the volume and beginning page number of the Condominium Records of Harris County, Texas, in which this Declaration and any amendments thereto are recorded. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit but also the Common Elements appurtenant thereto. The initial Deeds conveying each Condominium Unit to

each Owner may contain reservations, restrictions, exceptions and exclusions which Declarant deems to be consistent with and in the best interests of all Owners (including Declarant) and the Association.

C. Capacity of Owners. A Condominium Unit may be held and owned by more than one person in any real property relationship recognized under the laws of the State of Texas.

17. Uniform Applicability of Condominium Documents. In general, each Owner shall be subject to all the rights and duties assigned to Owners in general under the terms of the Condominium Documents. To the extent there are unsold Units owned by Declarant, Declarant shall enjoy the same rights and assume the same duties as any other Owner would as they relate to each individual unsold Unit unless otherwise provided herein. So long as Declarant owns one or more Units, Declarant shall be subject to the provisions of the Condominium Documents.

18. **Mortgages and Mortgagee Protections.**

A. Record of Mortgages. Any Owner who mortgages his or her interest in a Condominium Unit shall, within ten (10) days after the execution of such mortgage, give notice to the Association in writing of the name and address of his or her Mortgagee and of any eligible insurer, guarantor, or collateral assignee of his or her Mortgagee, and the amount secured by the mortgage, and the Association shall maintain such information in its records (the "Record of Mortgages") entitled "Mortgages of Condominium Units." The Record of Mortgages shall be separately maintained by the Association or by a person designated by the Association. Each Owner shall, in the same manner, notify the Association as to the release or discharge of any such mortgage.

B. Notices to Mortgagees. The Association shall, at the written request of any Mortgagee, insurer, guarantor, or collateral assignee of a Mortgagee appearing in the Record of Mortgages, notify such Mortgagee, insurer, guarantor, or collateral assignee of a Mortgagee of (i) any unpaid assessments due from the Owner of such Condominium Unit to the Association, (ii) the name of each company insuring the Condominium under the Master Policy and the amounts of the coverages thereunder, and of any lapse, cancellation or material modification thereof, (iii) any monetary default by an Owner, (iv) the Association's intent to foreclose its lien in accordance with Paragraph 11.H., (v) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders, and (vi) any casualty to, or taking of, either a material portion of the Condominium or the Condominium Unit securing its loan.

C. Effect on Mortgagees. Any First Mortgagee, upon foreclosure of its lien on a Condominium Unit, or upon acceptance of a deed in lieu of foreclosure thereon, shall not be required to pay any unpaid assessments owing thereon which accrue after the date of recordation of its First Mortgage and prior to the acquisition of title to such Condominium Unit by any such First Mortgagee, but shall be liable for such unpaid assessments accruing from and after the date that such First Mortgagee or its assignee acquires title to such Condominium Unit. Any assessment lien created or claimed hereunder as to any Condominium Unit shall be subject and subordinate to the rights of any holder of any duly recorded First Mortgage upon such Condominium Unit made in good faith and of value as to assessments due and payable after the date of recordation of such mortgage and prior to the date such First Mortgagee acquires title to such Condominium Unit. Except as expressly set forth herein, no lien created under the

provisions of this Declaration shall in any way defeat, invalidate or impair the rights of any First Mortgagee under any such duly recorded First Mortgage unless such First Mortgagee thereunder shall expressly subordinate its interest, in writing, to such lien.

D. Subordination Agreements. Notwithstanding anything contained in this Declaration to, the contrary, the Association may, upon the affirmative vote of Owners entitled to vote and holding in the aggregate more than fifty percent (50%) of the Percentages of Common Interest Ownership assigned to all Units, execute a subordination agreement or agreements to extend the benefits of the two preceding paragraphs to mortgages, deeds of trust and Mortgagees not otherwise entitled thereto.

E. Binding on Mortgagees. No breach of any provision of this Declaration shall impair or invalidate the lien of any duly recorded mortgage or deed of trust made in good faith and for value encumbering one (1) or more Condominium Units; provided, however, that all the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitude contained in this Declaration shall be binding upon and effective against any person who acquires title to or any beneficial interest in any Condominium Unit by way of foreclosure or otherwise.

F. Financial Statements. To the extent the Association does not have an audited financial statement, any First Mortgagee shall have the right to have an audited financial statement prepared at its own expense.

G. Working Capital Requirements. Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund established by Declarant shall be in an amount that is at least equal to two (2) months of estimated Common Expenses for each Unit. Each Unit's share of the working capital fund may be collected from each Owner either at the time the sale of the Unit is closed or when control of the Condominium is transferred to the Owners, whichever is earlier. Any amounts paid into the working capital fund shall not be considered as advance payments of regular Common Expense assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners.

Declarant shall not use working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. Upon the sale of any unsold Unit, Declarant shall be entitled to reimburse itself for any funds it paid to the Association for any unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold. An amount equal to two (2) months Regular Assessments shall be collected at each subsequent closing of the sale of a Unit, which amount shall be paid into the Association's fund for replacement reserves.

19. **Boundaries.** In the event that any portion of a Unit or a Common Element changes boundaries and thereby encroaches upon another Unit or Common Element due to the shifting, settling or moving of the Buildings, such changed boundaries shall be deemed to constitute the boundaries of the Units and the Common Elements so affected.

20. Amendments and Modifications.

A. Amendments. No purported amendment of any Condominium Document or any action or inaction of the Association shall:

- (i) vacate, waive, revoke, abandon or terminate, (other than by fire or other casualty or a taking of all Units by condemnation) the Condominium or the Declaration;
- (ii) be deemed to have changed the Percentage of Common Interest Ownership assigned to any Unit, except as provided in Paragraphs 14 or 20.B. or D. hereof, or the dimensions or boundaries of any Unit (including, without limitation, any change resulting from subdivision or partition), except pursuant to Paragraph 19 hereof; or
- (iii) be deemed to have changed or amended any material provision of the Condominium Documents (with the express exception of the provisions of the Bylaws which may be amended in accordance therewith or unless such change or amendment is done pursuant to Paragraphs 20.8. or 20.D.) including, but not limited to, voting rights, Assessments, reserves, insurance or fidelity bonds, rights to use of or interests in, or sale or transfer (apart from the Units to which they relate), abandonment, partition, subdivision or encumbrance of, the Common Elements (the granting by the Association of easements for public utilities or other public purposes consistent with the intended use of the Common Elements not being deemed a transfer within the meaning of the foregoing) the Common Elements, responsibility for the maintenance and repair of the Condominium, expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, convertibility of Units into Common Elements or vice versa, leasing of Units, imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey such Owner's Condominium Unit, or any other provision which is for the express benefit of any Mortgagee, insurer or guarantor of any first mortgage or deed of trust secured by a lien on any Condominium Unit, including, without limitation, provisions concerning the disposition of insurance proceeds and condemnation awards; unless: (a) as to item (ii) above, all Owners or Eligible Mortgagees vote pursuant to Paragraph 6.E., above, for such action at a meeting of the Association duly called and reflected in an instrument to such effect duly recorded in the Real Property Records of Harris County, Texas; or (b) as to items (i) and (iii) above, Owners (other than Declarant) holding in the aggregate at least eighty percent (80%) (as to item (i) above) and sixty-seven percent (67%) (as to item (iii) above) of the Percentages of Common Interest Ownership assigned to all Units (other than those owned by Declarant) and Eligible Mortgagees which represent at least eighty percent (80%) (as to item (i) above) and sixty-seven percent (67%) (as to item (iii) above) of the votes of Units that are subject to mortgages held by Eligible Mortgagees vote or otherwise agree to such action at a meeting of the Association duly called and reflected in an instrument to such effect duly recorded in the Real Property Records of Harris County, Texas; provided, however, unanimity of each Owner and each Eligible Mortgagee shall be required to the extent set forth in the Act and that no amendment shall discriminate against any Owner or against any Unit or against any group or class of Owners or Units without the prior written consent of such Owners, nor shall any amendment make any change in the provisions herein, relating to insurance and/or repair or reconstruction in the event of casualty or damage without the prior written consent of

all Eligible Mortgagees secured by a lien upon one (1) or more of the Units affected. In addition, the Limited Common Elements and the provisions of this Declaration relating to the right to use the Limited Common Elements may not be altered without the consent of each affected Owner and the Eligible Mortgagee, if any, holding a mortgage lien on such Unit. Further, after the termination of the period of Declarant control, no amendment of this Declaration, the By-laws or the Rules materially, adversely affecting the rights or obligations of the Owners of Commercial Units shall be valid, unless such amendment is also approved by Owners of 67% of the Common Interest Ownership of all Commercial Units. Pursuant to the provisions of the Texas Uniform Condominium Act, any amendment to this Declaration may not change the use restrictions on a unit unless the amendment is approved by one hundred percent (100%) of the votes of the Association.

B. Intentionally Omitted

C. Approval by Mortgagees of Amendments. Any Mortgagee who receives by certified or registered mail, with a "return receipt" requested, a written request to approve an amendment, modification or supplement hereto, and who does not deliver or post to the Association a negative response within thirty (30) days thereafter, shall, to the extent permitted by the Act, be deemed to have approved such request.

D. Amendments by Declarant. Notwithstanding the generality of the foregoing, and notwithstanding anything in this Declaration to the contrary, Declarant expressly retains the right and shall at all times have the right, to the extent permitted by the Act, to amend this Declaration without the consent or approval of any other person in order to:

- (i) correct survey or other errors made herein prior to the first meeting of Owners;
- (ii) change the Percentage of Common Interest Ownership assigned to, and the dimensions of, Units owned by Declarant so long as, except as permitted, by the Declaration, such changes do not affect the Percentage of Common Interest Ownership assigned to, or the dimensions of, the Units not owned by Declarant;
- (iii) make this Declaration comply with the mandatory provisions of the Act, if it be deficient in any such respect, or, as long as Declarant owns any Unit which has not been occupied, conform this Declaration to the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration or the Veterans Administration, with respect to condominium documentation.

Declarant expressly retains the right to make such amendments without permission of the Association or any other person or entity, whether said amendment or amendments occur before or after the Association takes over administration of the Condominium. Each Owner, by acceptance of a deed covering his or her Unit, authorizes and empowers Declarant, as such Owner's agent and attorney-in-fact for said purposes only, to execute, deliver and record any such amendment or amendments either in the name of Declarant, or in the name and as the act of such Owner and all other Owners, and this power and authorization shall be irrevocable.

21. Taxation.

A. Of Units After Separate Assessment. Each Unit shall be assessed and taxed for all purposes as a separate parcel of real estate entirely independent of the Buildings, and independent of the Condominium or the Common Elements thereof, and each Owner shall be solely responsible for the payment of all taxes, municipal claims, charges and assessments of any nature whatsoever assessed against such Unit. The valuation of the General Common Elements and the Limited Common Elements shall be assessed separately to each Owner in accordance with his or her Percentage of Common Interest Ownership in the Common Elements. Such payment shall be made prior to the due date of such taxes, municipal claims, charges and assessments.

B. Of Units Prior to Separate Assessment. Prior to the time the respective taxing authorities shall have assessed and taxed each Unit as a separate parcel of real estate as provided above, any such taxes, municipal claims, charges and assessments assessed, against the Condominium as a whole shall be an expense of the then existing owner(s) of the Condominium (including owners of units then conveyed), apportioned among such owners on the same basis as the percentage of Common Interest Ownership of the Common Elements, and pro-rated among such Owners to reflect their respective period of ownership for which such tax levy is effective.

22. Remedies.

In the event any default is made by any Owner under the Act, this Declaration, the Bylaws, or the Rules or Regulations, the Board or the Association or their representative shall have all of the rights and remedies which may be provided by the Act, this Declaration, or the Bylaws, or which may be available at law or in equity, and may prosecute any action or other proceeding against any defaulting Owner and/or Owners for enforcement of any lien or to enforce compliance with the matter with respect to which default has been made, by injunctive relief or otherwise, or for the collection of any sums, debts, or damages in default or arising from any default. The Board or its authorized representative shall be further empowered and authorized to correct and cure any matter in default and to do whatever may be necessary for such purpose. All expenses incurred in connection with any such action or proceeding shall be a part of the Common Expenses of this Condominium and collectible from each Owner as in the case of other Common Expenses. Notwithstanding the foregoing, in the enforcement by Declarant or the Association of restrictions against a Unit or its use, the party seeking to enforce the restriction must institute judicial proceedings before any items of construction may be altered or demolished.

23. Miscellaneous.

A. Effect of Accordance or Recordation of a Deed. The acceptance or recordation of a Deed to a Condominium Unit or the entering into occupancy of a Unit shall constitute an agreement by the Owner and his or her tenants, servants, visitors or occupants that: (i) this Declaration and the Condominium Documents, as they may be amended from time to time, and all items affecting title to the Land are accepted, agreed to and ratified by the Association and each such Owner, tenant, visitor, servant or occupant, and their respective heirs, executors, administrators, successors, legal representatives, assigns, purchasers, grantees, mortgagees and all others having or claiming an interest in any Unit, and all of such provisions shall be deemed to be covenants running with the land to bind any person having at any time any interest or estate

in such Condominium Unit, as though such provisions were cited and stipulated in each and every Deed to a Condominium Unit, and (ii) violations of the terms of the Condominium Documents by any such person shall be deemed to be a substantial violation of the duties of the Owner.

B. Severability, Interpretation. If any provision of this Declaration or the Bylaws, or any section, sentence, paragraph, clause, phrase or word, or the application thereof in any circumstance shall be invalid or unenforceable, the validity or enforceability of the remainder of the Condominium Documents and the application of any such provisions, section, sentence, paragraph, clause, phrase, or word in any other circumstance shall not be affected thereby. If anything in the Condominium Documents shall be susceptible to two or more interpretations, then the interpretation which shall most nearly be in accord with the intent of the Act, and the general purposes and intent of the Condominium Documents, shall govern.

C. No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

D. Separation of Estates. The separate and common estates created by this Declaration shall continue until this Declaration is terminated in the manner and to the extent as is provided herein.

E. No Gift or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Land or the Buildings to the public or for any public use.

F. Mechanic's and Materialman's Liens. No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner or his or her agent or his or her contractor or subcontractor shall be the basis for the filing of a lien against the Condominium or the Unit of any other Owner not expressly consenting to or requesting the same, or against the Common Elements. Each Owner shall indemnify and hold harmless the Condominium and each of the other Owners from and against any loss, cost or expense in connection with construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

G. Security. **THE TERM "DECLARANT" AS USED IN THIS PARAGRAPH 23G SHALL HAVE THE MEANING SET FORTH IN PARAGRAPH 1U "DEFINITIONS" HEREOF AND SHALL FURTHER INCLUDE, WITHOUT LIMITATION, THE DECLARANT, ITS GENERAL PARTNER(S), PARTNERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, SUB-CONTRACTORS, DESIGN CONSULTANTS, ARCHITECTS, ADVISORS, BROKERS, SALES PERSONNEL, AND MARKETING AGENTS. THE TERM "ASSOCIATION" AS USED IN THIS PARAGRAPH 23G SHALL HAVE THE MEANING SET FORTH IN PARAGRAPH 1D HEREOF AND SHALL FURTHER INCLUDE, WITHOUT LIMITATION, THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AND AGENTS. THE DECLARANT AND THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE CONDOMINIUM. NEITHER SHALL**

THE DECLARANT OR THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES, OR OTHER SECURITY SYSTEMS (IF ANY ARE PRESENT) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION, BURGLAR, ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. THE DECLARANT AND THE ASSOCIATION ARE NOT AN INSURER AND EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND ACKNOWLEDGES THAT THE DECLARANT AND THE ASSOCIATION HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS THE DECLARANT AND THE ASSOCIATION, ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE CONDOMINIUM.

H. Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

I. Notices. Notices provided for in the Act, this Declaration or the Bylaws shall be in writing and shall be addressed to the Board or the Association at the address of the Board, the Association or their respective representatives which may be established from time to time and of which the Owners shall be notified. Notice to the Owners may be sent to the mailing address of their respective Units or to such other address which any Owner may in writing designate by notice thereof to the Board, the Association or their respective representatives. Any notice which is required to be sent, given or delivered pursuant to the terms of this Declaration, the Bylaws or the Rules and Regulations shall be deemed sent, given and delivered on the earlier of (i) the date actually received or (ii) three (3) business days after deposit for delivery by the U. S. Postal Service, postage prepaid, certified mail, return receipt requested.

J. Omissions. In the event of the omission from the Condominium Documents 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 applied by inference and/or by reference to the Act.

K. Captions and Exhibits. Captions used in the various articles and sections of this Declaration are for convenience only and they are not intended to modify or affect the meaning of any of the substantive provisions hereof.

L. Use of Number and Gender. Wherever used herein and unless the content shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders.

M. Conflicting or Inconsistent Provisions. If at any time, a provision of the Rules and Regulations or Bylaws, as then existing, conflicts with or is inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control. If at any time, a provision of the Rules and Regulations conflicts with or is inconsistent with the provisions of the Bylaws, the provision of the Bylaws shall control.

N. Governing Law. **THE CONDOMINIUM DOCUMENTS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN HARRIS COUNTY, TEXAS.**

SUBORDINATION

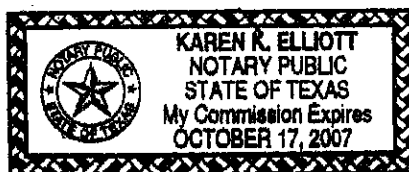
The undersigned Sam McHard, the owner and holder of liens against the property described in the foregoing attached Declaration of Condominium for 118 McGowen Condominium hereby in all things subordinates all liens and security interests held by Southwest Bank of Texas, NA to same.

Sam McHard

By: Sam McHard
Name: Vice President
Title: _____

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was executed before me on this the 26 day of May, 2004, by Sam McHard, a Vice President of Southwest Bank of Texas, NA, a national banking association on behalf of said Bank.



Karen Elliott
Notary Public - State of Texas