

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

DECLARATION

This Declaration is made July 12, 2004, at Galveston, Texas, by **DAVID P. MASSICOTT AND ROGER M. MASSICOTT**, (collectively referred to as "Declarant"), whose mailing address is P O Box 1355, Galveston, Texas 77553, pursuant to Section 8 01(a) of the Declaration for Ship's Mechanic Row Building Condominium in the Official Records of Real Property of Galveston County, Texas

RECITALS

1 Declarant is the owner of all of the real property, including the land; all improvements and structures on the property, and all easements, rights, and appurtenances belonging to the property that is located in the City of Galveston, County of Galveston, State of Texas (the "Property"), more particularly described in **Exhibit "A"** which is attached and incorporated by reference

2 Declarant submits the Property to a condominium regime established by the Texas Uniform Condominium Act (TUCA) which is codified in Chapter 82 of the Property Code

3 The Property constitutes a condominium project (the "Project") within the meaning of TUCA. The formal name of the Project is **Ship's Mechanic Row Building Condominium.**

4 Declarant intends and desires to establish by this Declaration a plan of ownership for the condominium project. The plan consists of individual ownership of Residential Units (the "Residential Unit"), Commercial Units (the "Commercial Unit"), Parking Garage Units (the "Parking Garage Units"), (collectively referred to as the "Units,") and other areas. The Project shall be divided into no more than twenty-four (24) units

5 The Declarant intends to impose on the Project mutually beneficial restrictions for the benefit of all Units and the persons who own those Units (the "Owners"). The Declarant further intends, in accordance with the terms set forth herein, that the Owners will govern the Project by means of an organization of Owners (herein the "Association"), as more particularly

set forth herein. The formal name of the Association is **Ship's Mechanic Row Building Owners Association, Inc.**

6 The Units and other areas of the Project are more particularly described in Exhibits B and C, which are attached and incorporated by reference. The Owners each have an undivided interest in the remaining property of the Project (referred to as the "Common Elements"), which is also more particularly described in Exhibits B and C. Exhibit C sets forth the allocation to each Unit of (a) a fraction or percentage of undivided interests in the common elements of the condominium, (b) a fraction or percentage of undivided interests in the common expenses of the Association, and (c) a portion of votes in the Association, by the formulas set forth therein.

7 Therefore, the Declarant declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the property and the division of the Property into Units, and all of which are established and agreed on for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Project and every part of the Project. All of the covenants, conditions and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in or any part of the Property and shall be for the benefit of each Owner of the Project or any interest in the Project and shall inure to the benefit of and be binding on each successor in interest of the Owners.

ARTICLE 1
DEFINITIONS

Articles

1.01 *Articles* mean the Articles of Incorporation of the Association that are or shall be filed in the Office of the Secretary of State of the State of Texas.

Association

1.02 *Association* means Ship's Mechanic Row Building Owners Association, Inc., a corporation organized under the Texas Non-Profit Corporation Act for the management of the Project, the membership of which consists of all of the Owners in the Project.

Board

1.03 *Board* means the Board of Directors of the Association.

Bylaws

1 04 *Bylaws* mean the Bylaws of the Association and amendments to the Bylaws that are or shall be adopted by the Board

Condominium

1 05 *Condominium* means the separate ownership of single units in a multiple-unit structure or structures with common elements

Commercial Unit

1 06 *Commercial Unit* means Units No 214, 216, 2420, 2422, 2424 and 2428 shown on Exhibit "B" and any units which result from a combination pursuant to the Development rights retained by Declarant in Article 9 of this Declaration

Common Elements

1 07 *Common Elements* means all elements of the Project except the separately owned Units, and includes both General and Limited Common Elements.

DESCRIPTION OF COMMON ELEMENTS: The term "Common Elements" means and includes the land on which the buildings are located and all portions of the property not contained within any Unit, including, but not by way of limitation, the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the buildings, the grounds, and storage spaces, the maintenance storage building; installations of all central services, including power, light, gas, cold water, heating, air conditioning equipment not serving an individual Unit, and garbage collection, the tanks, pumps, motors, fans, compressors, ducts, and in general, all apparatuses and installations existing for common use, any driveways; utility pipes, lines, or systems servicing more than a single Unit, all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used with them; all limited common elements as described below, and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as common elements in the plat and all repairs and replacements of any of these items

Declarant

1 08 *Declarant* means David P Massicott and Roger M. Massicott, and their heirs, executors, administrators, successors and assigns

Declaration

1 09 *Declaration* means this Declaration document and all that it contains

General Common Elements

1 10 *General Common Elements* mean all the Common Elements except the Limited Common Elements

Governing Instruments

1 11 *Governing Instruments* mean the Declaration, and the Articles of Incorporation, Bylaws, and Rules of the Association, as may be amended from time to time

Limited Common Elements

1 12 *Limited Common Elements* mean the Common Elements allocated for the exclusive use of one or more but less than all of the Units

DESCRIPTION OF LIMITED COMMON ELEMENTS. The term "Limited Common Elements" means and includes those portions of the common elements reserved for the use of certain Units to the exclusion of other Units. The Limited Common Elements will be any balconies and attics that are immediately adjacent and contiguous to certain Units. The use and occupancy of designated Limited Common Elements will be reserved to its associated Unit. Each Unit owner is granted an irrevocable license to use and occupy their respective Limited Common Elements, and will have the sole responsibility to maintain their respective Limited Common Elements as provided below

Manager

1 13 *Manager* means the person or corporation, if any, appointed by the Board to manage the Project

Owner(s)

1 14 *Owner(s)* means any person that owns a Unit with the Project

Parking Garage Units

1 15 *Parking Garage Units* means Units 2420 Rear Numbers 1 through 14 shown on Exhibit "B "

Person

1 16 *Person* means an individual, firm, corporation, partnership, association, trust, other legal entity, or any combination of persons or entities

Project

1 17 *Project* means the entire parcel or the Property described in Exhibit A, including the land, all improvements and structures on the Property, and all easements, rights and appurtenances belonging to the Property that are divided or are to be divided into Units to be owned and operated as a Condominium. The Project shall be divided into no more than 24 units.

Residential Unit

1 18 *Residential Unit* means Unit 2426 Mechanic Unit 1, 2426 Mechanic Unit 2, 2426 Mechanic Unit 3 and 2426 Mechanic Unit 4 shown on Exhibit "B" attached to this Declaration.

Rules

1 19 *Rules* mean and refer to the Rules and Regulations for the Project adopted by the Board pursuant to this Declaration as may be amended from time to time.

Unit

1 20 *Unit* means a physical portion of the condominium designated by Exhibits B and C for separate ownership and occupancy.

DESCRIPTION OF CONDOMINIUM UNITS

A Each condominium unit ("Unit") has immediate access to a hallway or entryway, which is part of the Common Elements. Exhibits "B - First Floor" and "B - Second Floor" and "C" set forth the number of each Unit, indicating the floor and location of the Unit, a general description of the Unit, the approximate square footage in the Unit and the approximate percentage of undivided interest in the common elements appertaining to the Unit. The Units are more particularly described in the plats attached as Exhibits "B - First Floor" and "B - Second Floor."

B The boundary lines of each Residential and Commercial Unit are the undecorated and/or unfinished interior surfaces of its perimeter or bearing walls, windows and doors, its lowermost floor and uppermost ceiling. Each Residential and Commercial Unit will include both the portions of the building in which it is located that are not common elements within those boundary lines and the space encompassed within those boundary lines, excepting common elements. A Residential or Commercial Unit includes any finishing material applied or affixed to the interior surfaces of the interior walls, floors, and ceilings, non-supporting interior walls, and all utility pipes, lines, systems, fixtures, or appliances found within the boundary lines of the

Residential or Commercial Unit and servicing only that Unit Parking Garage Units encompass the square footage located between the lines marking and separating each parking space

ARTICLE 2

THE PROPERTY

Property Subject to Declaration

2 01 All the real property described in Exhibit A to this declaration, including the land, all improvements and structures on the property, and all easements, rights and appurtenances belonging to the property (referred to as the "Property") shall be subject to this Declaration

Exclusive Ownership and Possession

2 02 Each Owner shall be entitled to the exclusive ownership and possession of the Owner's Unit Any Unit may be jointly or commonly owned by more than one Person No Unit may be subdivided. Declarant reserves the right to combine Commercial Units pursuant to Article IX hereof The boundaries of the Unit shall be and are the interior surfaces of the perimeter walls, floors, ceilings, and the exterior surfaces of balconies and terraces All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpapers, paint, finished flooring, and other finish surface materials are a part of the Unit. An Owner shall not be deemed to own the utilities running through the Owner's Unit that are utilized for or serve more than one Unit, except as a tenant in common with the other Owners An Owner shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows, and doors bounding the Owner's Unit

Common Elements

2 03 Each Owner shall be entitled to an undivided interest in the Common Elements described in Exhibit C in the percentage expressed in Exhibit C The percentage of the undivided interest of each Owner in the Common Elements, as expressed in Exhibit C, shall have a permanent character and shall not be altered without the consent of all Owners, expressed in an amended, duly recorded Declaration. The percentage of the undivided interest in the Common elements shall not be separated from the Unit to which it pertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though the Interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may

use the Common Elements in accordance with the purpose for which they are intended as long as the lawful rights of the other Owners are not hindered or encroached on

Limited Common Elements

2 04 There are no Limited Common Elements at the time of the filing of this Declaration, however, should any decks or balconies or patios be added by any Residential Unit Owner in the future, such decks or balconies or patios shall be reserved for the exclusive use of the Owners of the Units to which they are appurtenant.

Partition of Common Elements

2 05 The Common Elements, both General and Limited, shall remain undivided and shall not be the object of an action for partition or division of ownership so long as the Property remains a Condominium Project. In any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all mortgagees must be obtained.

Nonexclusive Easements

2 06 Each Owner shall have a nonexclusive easement for the use and enjoyment of the General Common Elements and for ingress, egress, and support over and through the General Common Elements. These easements shall be appurtenant to and shall pass with the title to each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

Other Easements

2 07 The Association may grant to third parties easements in, on, and over the Common Elements for the purpose of constructing, installing, or maintaining necessary utilities and consents to such easements. No such easement may be granted, however, if it would interfere with any exclusive easement or with any Owner's use, occupancy, or enjoyment of the Owner's Unit.

Easements for Maintenance or Encroachments

2 08 None of the rights and obligations of the Owners created in this Declaration or by the deeds granting the Units shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist provided, however, that in no event shall a valid

easement for an encroachment be created in favor of any Owner if the encroachment occurred because of the willful conduct of the Owner

ARTICLE 3

UNIT OWNERS ASSOCIATION

Association

3 01 The Association, organized as a nonprofit corporation under the Texas Non-Profit Corporation Act, operating under the name Ship's Mechanic Row Building Owners Association, Inc., is charged with the duties and invested with the powers prescribed by law and set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws.

Membership

3 02 Membership in the Association is automatically granted to the Owner or Owners of each Unit in the Project. On the transfer of title to any Unit, the membership of the transferor automatically ceases and each new Owner becomes a member

Voting Rights

3 03 Voting shall be on a percentage basis. The Owner of each Unit is entitled to a percentage of the total vote equal to the percentage interest that the Owner's Unit bears to the entire Project as assigned in Exhibit C. If a Unit has more than one Owner, the aggregate vote of the Owners of the Unit may not exceed the percentage of the total vote assigned to the Unit

Membership Meetings

3 04 Meetings of the Owners shall be called, held, and conducted in accordance with the requirements and procedures set forth in the Bylaws. Special meetings of the members may be called by the members representing at least twenty-five percent (25%) of the total voting power of the Association

General Powers and Authority

3 05 The Association shall have all of the powers allowed by TUCA, as well as all the powers of a nonprofit corporation established under Texas law, subject only to the limitations contained in this Declaration and in the other Governing Instruments. The Association may perform all acts that may be necessary for, or incidental to, the performance of the obligations and duties imposed on it by this Declaration and the other Governing Instruments. The powers of the Association shall include, but are not limited to, the following

- (a) The power to establish, fix, and levy assessments against Owners in accordance with the procedures and subject to the limitations set forth in Article 4 of this Declaration
- (b) The power to adopt reasonable operating rules governing the use of the Common Elements and any facilities located on the Common Elements, as well as the use of any other Association property
- (c) The right to institute and maintain actions for damages or to restrain any actual or threatened breach of any of the provisions of the Governing Instruments or Association Rules in its own name, either on its own behalf or on behalf of any consenting Owner
- (d) The right to discipline Owners for violation of any of the provisions of the Governing Instruments or Association Rules by suspension of the violator's voting rights or privileges for use of the Common Elements or by imposition of monetary penalties, subject to the following limitations
 - (i) The accused Owner must be given written notice of the violation or property damage, stating the amount of any proposed fine or damage charge and that the Owner may request a written hearing before the Board within thirty (30) days of the notice
 - (ii) The accused Owner must be given a reasonable time, by a date specified in the notice, 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 twelve (12) months
 - (iii) The accused Owner must be given written notice of a levied fine or damage charge within thirty (30) days after the date of levy
 - (iv) Any suspension of privileges or imposition of monetary penalties shall be reasonably related to the Owner's violation.
- (e) The power to delegate its authority, duties, and responsibilities, through the Board of Directors, to such committees, officers, or employees as are permitted to be retained under the Governing Instruments
- (f) The right, through its agents or employees, to enter any Unit when necessary in connection with any maintenance, landscaping or construction for which the

Association is responsible. Such entry shall be made with as little inconvenience to the Owner as is practicable and any damage caused by the entrance shall be repaired by the Association at its own expense.

Board of Directors and Officers of the Association

3.06 The affairs of the Association shall be managed and its duties and obligations performed by a Board of Directors. Provisions regulating the number, term, qualifications, manner of election, and conduct of meetings of the members of the Board of Directors shall be set forth in the Bylaws of the Association. The Board shall elect officers, which shall include a President, Treasurer, Secretary, and such other officers as the Board may deem proper. Provisions regulating the numbers, term, qualifications, manner of election, powers and duties of the officers shall be set forth in the Bylaws of the Association.

Duties of the Association

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

- (a) Operation and maintenance of the Common Elements and the facilities located on the Common Elements. This duty shall include, but shall not be limited to, exterior painting, maintenance, repair, and landscaping, if applicable, of the Common Elements as the Board shall determine are necessary and proper.
- (b) Acquisition of and payment from the maintenance fund for the following:
 - (i) Water, sewer, garbage, electrical, telephone, gas, elevator and other necessary utility service for the Common Elements and, to the extent not separately metered and charged, for the Units.
 - (ii) A policy or policies of fire insurance with extended coverage endorsement for the full insurable replacement value of the Units and Common Elements payable as provided in Article 6 of this Declaration, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their mortgages, as their respective interests may appear.
 - (iii) A policy or policies insuring the Board, the Owners and/or the Association against any liability to the public or to the Owners and their tenants and invitees, incident to the ownership and/or use of the Project, including the

personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for any one person injured, \$2,000,000.00 for any one accident, and \$3,000,000.00 for property damage. The limits and coverage shall be reviewed at least annually by the Board and varied in its discretion, provided, however, that the said limits and coverage shall never be of fewer kinds or lesser amounts than those set forth in this Paragraph. The policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement in which the rights of named insured under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured.

- (iv) Workers' Compensation insurance to the extent necessary to comply with any applicable laws.
 - (v) The services of personnel that the Board shall determine to be necessary or proper for the operation of the Common Elements.
 - (vi) Legal and accounting services necessary or proper for the operation of the Common Elements or the enforcement of this Declaration.
- (c) Preparation and distribution, on a regular basis, of financial statements to the owners in accordance with the following:
- (i) A pro forma operating statement for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.
 - (ii) A balance sheet, as of an accounting date that is the last day of the month closest in time to three months from the date of closing for the first sale of a Unit in the Project, and an operating statement for the period from the date of the first closing to the accounting date shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of the Project Units and the names of the persons assessed.
 - (iii) A balance sheet as of the last day of the Association's fiscal year and an operating statement for the fiscal year shall be distributed within 90 days after the close of the fiscal year.

- (d) Maintenance of the following books and records, such books and records to be kept in accordance with generally accepted accounting procedures:
 - (i) Financial records with a detailed account of the receipts and expenditures affecting the Project and its administration and specifying the maintenance and regular expenses of the Common Elements and any other expenses incurred by or on behalf of the project
 - (ii) Minutes of proceedings of Owners, Board of Directors, and Committees to which any authority of the Board of Directors has been delegated
 - (iii) Record of the names and addresses of all Owners with voting rights
 - (iv) Plans and specifications used to construct the project
 - (v) The condominium information statement given to all Owners by the Declarant before sale.
 - (vi) Voting records, proxies, and correspondence relating to declaration amendments.
- (e) Arrangement for an annual independent audit of all books and records of the Association

Declarant's Control Period

3 08 Declarant shall have the power to appoint and remove officers and members of the Board for a period not to exceed three (3) years after the date hereof or until one hundred twenty (120) days after Declarant has conveyed seventy-five percent (75%) of the Units in the Project to Owners other than Declarant, provided, however, that not later than the one hundred twentieth (120th) day after Declarant's conveyance of fifty percent (50%) of the Units to Owners other than a Declarant, not less than one-third (1/3rd) of the Board members must be elected by Owners other than Declarant.

Powers and Duties of the Board of Directors

3 09 The Board shall act in all instances on behalf of the Association, unless otherwise provided by this Declaration. The Board's powers and duties shall include, but shall not be limited to, the following

- (a) Enforcement of the applicable provisions of this Declaration, the Bylaws, and any Rules of the Association

- (b) Payment of taxes and assessments that are or could become a lien on the Common Elements or a portion of the Common Elements
- (c) Contracting for casualty, liability, and other insurance on behalf of the Association
- (d) Contracting for goods and services for the Common Elements, facilities, and interest of the Association
- (e) Delegation of its powers to such committees, officers, agents, or employees of the Association as are expressly authorized by the Governing Instruments
- (f) Preparation of, or contracting for and approving, budgets and financial statement for the Association as prescribed in the Governing Instruments
- (g) Formulation of rules of operation for the Common Elements and facilities owned or controlled by the Association
- (h) Initiation and execution of disciplinary proceedings against Owners for violations of provisions of the Governing Instruments in accordance with procedures set forth in the Governing Instruments
- (i) Authorizing entry into any Unit as necessary in connection with construction, maintenance, or emergency repair for the benefit of the Common Element or the Owners in the aggregate.

Limitations on Powers of Board of Directors

3 10 Notwithstanding the powers set forth in Paragraph 3 09 of this Declaration, the Board shall be prohibited from taking any of the following actions except with the approval of a majority of the voting power of the Association residing in the Owners

- (a) Entering into (i) a contract with a third person under which the third person will furnish goods or services for a term long than one (1) year, (ii) a contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate; or (iii) prepaid casualty and/or liability insurance of not more than three (3) years' duration, provided that the policy provides for short-rate cancellation by the insured.

- (b) Incurring aggregate expenditures for capital improvements to the Common Elements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (c) Selling, or contracting to sell, during any fiscal year property of the Association having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (d) Paying compensation to Directors or to officers of the Association for services rendered in the conduct of the Association's business, provided, however, that the Board may cause a Director or officer to be reimbursed for reasonable expenses incurred in carrying out the business of the Association

ARTICLE 4
ASSESSMENTS

Covenant to Pay

4 01 The Declarant covenants and agrees with regard to each Unit owned by it in the Project, and each Owner by acceptance of the deed to such Owners Unit is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. All monies collected shall be put into a maintenance fund to be used to defray the expenses attributable to the ownership, operation, and maintenance of common interests by the Association. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Elements or by abandonment of the Owner's Unit.

Regular Assessments

4 02 Regular assessments shall be made in accordance with the following: within sixty (60) days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year, including a reasonable provision for contingencies and replacements with adjustments made for any expected income and surplus from the prior year's fund. This estimated cash requirement shall be assessed to each Owner according to the ratio of the number of square feet owned by said Owner to the total number of square feet in the Project subject to assessment. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month.

Special Assessments

4.03 Special assessments shall be made in accordance with the following. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year because of the cost of any construction, unexpected repair, replacements of capital improvements on the Common Elements, or for any other reason, it shall make a special assessment for the additional amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments.

Limitations on Assessments

4.04 The Board may not, without the approval of a majority of the voting power of the Association residing in Owners other than Declarant, impose a regular annual assessment per Unit that is more than twenty percent (20%) greater than the regular annual assessment for the preceding year, or levy special assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that year. These limitations shall not apply to a special assessment levied against an Owner to reimburse the Association for funds expended in order to bring the Owner into compliance with the provisions of the Association's Governing Instruments.

Commencement of Assessments

4.05 Regular assessments shall commence on the date of closing of the first sale of a Unit in the Project.

Liability for Assessments

4.06 Each monthly portion of a regular assessment and each special assessment shall be a separate, distinct, and personal debt and obligation of the Owner against whom the assessments are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent. If any assessment is paid more than fourteen (14) days after the due date, a late fee of \$75.00 shall be assessed against each delinquent assessment.

Payment of Assessments on Conveyance of Unit

4.07 On the sale or conveyance of a Unit, all unpaid assessments against an Owner for the Owner's share in the expenses to which Articles 4.02 and 4.03 of this Declaration refer shall first be paid out of the sales price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- (a) Assessments, liens, and charges in favor of the State of Texas and any political subdivision of the State of Texas for taxes past due and unpaid on the Unit.

(b) Amounts due under mortgage instruments duly recorded

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Lien and Foreclosure for Delinquent Assessments

4 08 The Association shall have a lien on each Unit for any delinquent assessments attributable to that Unit. The Association is authorized to enforce the lien through any available remedy, including nonjudicial foreclosure pursuant to Texas Property Code Section 51.002. The Owners expressly grant to the Board a power of sale, through a trustee designated in writing by the Board, in connection with any such liens.

ARTICLE 5

RESTRICTIONS AND COVENANTS

General Restrictions on Use

5 01 The right of an Owner and the Owner's guests to occupy or use the Owner's Unit or to use the Common Elements or any of the facilities on the Common Elements is subject to the following restrictions:

- (a) No Residential Unit Owner shall occupy or use the Owner's Unit, or permit the Unit or any part of it to be occupied or used, for any purpose other than as a private residence. Nothing in this Declaration shall prevent the Owner from leasing or renting out the Owner's Unit, provided that the Unit is not used for transient or hotel purposes and that the term of the lease is for a period of at least six (6) months and is subject to the Association's Governing Instruments and Rules.
- (b) Commercial Units may be used for any purpose set forth in Exhibit "D".
- (c) There shall be no obstruction of the Common Elements. Nothing shall be stored in the Common Elements without the prior consent of the Board, except as expressly provided for in the Declaration, or in designated storage areas.
- (d) Nothing shall be done or kept in any Unit or in the Common Elements that will increase the rate of insurance on the Common Elements or the Project without the prior written consent of the Board. No Owner shall permit anything to be done or kept in the Owner's Unit or in the Common Elements that will result in the cancellation of insurance on any Unit or on any part of the Common Elements or that would be in violation of any law. No waste shall be permitted in the Common Elements. No gasoline, kerosene, cleaning solvents, or other flammable liquids shall be stored in the Common Elements or in any Unit, provided,

however, that reasonable amounts in suitable containers may be stored in the storage spaces

- (e) No sign of any kind shall be displayed to the public view on or from any Residential Unit or the Common Elements without the prior written consent of the Board. Signs may be displayed to the public view from the Commercial Units, but such signs may be removed by the Board or any manager appointed by the Board if the Board or manager shall deem them offensive or inappropriate
- (f) Nothing shall be placed, hung, or displayed on the exterior of the Units or building. Such prohibition shall include, but not be limited to, holiday decoration, flags, banners, and plants
- (g) Window treatments visible from the exterior of the Units must be of a white color. No mirror finished window tinting shall be allowed
- (h) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Units or in the Common Elements, except that dogs, cats, or other household pets may be kept in Units, subject to the Rules and Regulations adopted by the Board
- (i) No nuisances will be allowed on the Project, nor any use or practice which is the source of annoyance or offense to residents or which interferes with the peaceful possession and proper use of the Property by its residents. All parts of the Property will be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No Unit Owner will permit any use of his or her Unit or make any use of the General or Limited Common Elements which will constitute a nuisance or annoyance to the residents of other Units. The Board will determine whether an activity is offensive or constitutes a nuisance subject to the reasonable Rules adopted by the Board
- (j) Nothing shall be altered or constructed in or removed from the Common Elements, except on the written consent of the Board
- (k) There shall be no violation of the Rules adopted by the Board and furnished in writing to the Owners pertaining to the use of the Common Elements. The Board is authorized to adopt such Rules, and to amend them from time to time

- (l) No immoral, improper, offensive or unlawful use will be made of the Project, and all valid laws, zoning ordinances and regulations of the governmental bodies having jurisdiction of the Property will be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Project will be the responsibility of the Association of owners acting by and through the Board.
- (m) Without the prior written consent of the Board, a Unit Owner shall not permit anything to be done or kept in his or her Unit or in the Limited Common Elements appurtenant to the Unit that would result in an increase in the cost of insurance on the Project, or that would result in the cancellation of insurance with respect to all or any part of the Project, or that would be in violation of any valid law, zoning ordinance or other governmental regulation.
- (n) A Unit may not be renovated or remodeled in any manner which interferes with the aesthetic or structural integrity of the supporting structure. A unit owner shall not alter, construct in, or remove anything from the common elements without the prior written consent of the Board.

Maintenance

5 02 Except for those portions that the Association is required to maintain and repair, each Owner shall, at the Owner's sole cost and expense, maintain and repair the Owner's Unit and any Limited Common Elements so as to keep them in good condition and repair. Each Owner shall also maintain and repair those portions of the Common Elements subject to an exclusive easement appurtenant to the Owner's Unit.

Damage Liability

5 03 Each Owner shall be liable to the Association for all damage to the Common Elements or to other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or the Owner's family, guests, invitees, or tenants.

Exemption

5 04 Declarant shall be exempt from the restrictions of Article 5 01 of this Declaration to the extent reasonably necessary for completion of construction, sales, or additions to the Project. Such exemption includes, but is not limited to, maintaining Units as model homes,

placing advertising signs on Project property, and generally making use of the Project and Common Elements as is reasonably necessary to carry on construction activity

ARTICLE 6

DAMAGE OR DESTRUCTION

Application of Insurance Proceeds

6 01

- (a) If the Project is damaged by fire or any other disaster, the insurance proceeds, except as provided in Paragraph 6 01(b) of this Declaration shall be applied to reconstruct the Project
- (b) Reconstruction shall not be compulsory if at least seventy-five percent (75%) of the vote of the Owners, which shall include the vote of each Owner of a Unit or assigned Limited Common Element that will not be rebuilt or repaired, is cast not to rebuild. If the Owners so vote to not rebuild any Unit, that Unit's allocated interest shall be automatically reallocated on the vote as if the Unit had been condemned, and the Association shall prepare, execute, and record an amendment to Exhibit C of the Declaration reflecting the reallocation. If the entire Project is not repaired or replaced and unless otherwise unanimously agreed to by the Owners, the proceeds shall be delivered pro rata to the Owners or their mortgagees, as their interest may appear, in accordance with the percentages or fractions set forth in Exhibit C of this Declaration and the land shall be sold and the proceeds of such sale shall be distributed in the same fashion

Insufficient Insurance Proceeds

6 02 When reconstruction is required by the terms of Article 6 01 of this Declaration, but the insurance proceeds are insufficient to cover the cost of reconstruction, the costs in excess of the insurance proceeds and reserves shall be considered a common expense that is subject to the Association's lien rights

Obtaining Bids for Reconstruction

6 03 If the Project is damaged by fire or any other disaster, the Board shall obtain firm bids, including the obligation to obtain a performance bond, from two or more responsible contractors to rebuild the Project in accordance with its original plans and specifications. The Board shall also, as soon as possible after obtaining the bids, call a special meeting of the

Owners to consider the bids. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner may obtain bids and call and conduct a meeting as provided by this Article 6.03. At such meeting, the Owners may, by a vote of not less than sixty-seven percent (67%) of the votes present, elect to reject all of the bids or, by not less than fifty-one percent (51%) of the votes present, elect to reject all the bids requiring amounts more than five hundred dollars (\$500.00) in excess of available insurance proceeds. If all bids are rejected, the Board shall obtain additional bids for presentation to the Owners. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable.

ARTICLE 7

RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUST

Declarant warrants that beneficiaries under deeds of trust to Units in the Project shall be entitled to the following rights and guaranties:

- (a) Should any of the Association's Governing Instruments provide for a "right of first refusal," such right shall not impair the rights of a beneficiary under a first lien deed of trust to the following:
 - (i) To exercise the power of sale, foreclose, or take title to a Unit pursuant to the remedies provided in the deed of trust.
 - (ii) To accept a deed or assignment in lieu of sale or foreclosure in the event of default by a grantor.
 - (iii) To interfere with a subsequent sale or lease a Unit so acquired by the beneficiary.
- (b) A beneficiary under a first lien deed of trust is entitled, on request, to written notification from the Association at any address given to, or ascertained by, the Association, of any default in the performance by the grantor of any obligation under the Association's Governing Instruments that is not cured within thirty (30) days.
- (c) Any beneficiary under a first deed of trust who obtains title to a Unit pursuant to the remedies provided in the deed of trust will not be liable for such Unit's unpaid assessments that accrue prior to and within thirty (30) days' notice of any notice given to such beneficiary.

- (d) Unless at least two-thirds (2/3) of the beneficiaries under first deeds of trust (based on one vote for each first deed of trust owned) or Owners other than Declarant give their prior written approval, the Association shall not be entitled to the following
- (i) By act or omission, to seek to abandon or terminate the Project
 - (ii) To change the pro rata interest or obligations of any individual unit for the purpose of.
 - (A) Levying assessments or charges
 - (B) Allocating distributions of hazard insurance proceeds or condemnation awards
 - (C) Determining the pro rata share of ownership of each Unit in the Common elements and in the improvements in the Common Elements
 - (iii) To partition or subdivide any Unit
 - (iv) By act or omission, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause.
 - (v) In case of loss to a Unit and/or Common Elements of the Project, to use hazard insurance proceeds for losses to any Project property (whether to Units or the Common Elements) for other than the repair, replacement, or reconstruction of such property, except as provided by statute
- (e) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law shall relate only to the individual Units and the Owner's interest in the Common Elements and not to the Project as a whole
- (f) No provisions of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of a beneficiary under a first deed of trust to a Unit pursuant to its deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Elements or portions of the Common Elements

- (g) Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. The reserve fund will be funded through the regular monthly assessments rather than by special assessments.

**ARTICLE 8
GENERAL PROVISIONS**

Amendment

8 01

- (a) This Declaration may be amended only at a meeting of the Unit Owners at which the amendment is approved by the holders of at least sixty-seven (67) percent of the ownership interests in the Project.
- (b) An amendment of the Declaration may not alter or destroy a Unit or a Limited Common Element, or any interest therein, without the consent of the affected Owners and the Owners' first lien mortgagees.
- (c) Any amendment shall be evidenced by a writing that is prepared, signed, and acknowledged by the President or other officer designated by the Board to certify amendments. The amendment shall be effective on filing in the Office of the County Clerk of Galveston County, Texas.

Nonwaiver of Remedies

8 02 Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

Severability

8 03 The provisions of this Declaration shall be deemed independent and severable. The invalidity, partial invalidity, or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

Binding

8 04 This Declaration, as well as any amendment to this Declaration, and any valid action or directive made pursuant to it, shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

Interpretation

8.05 The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce the provision or any other provision of this Declaration.

Limitation of Liability

8.06 The liability of any Owner for Performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of the Owner's entire interest in the Owner's Unit with respect to obligations arising from and after the date of such divestment.

Fair Housing

8.07 Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, sex, religion, ancestry, or national origin.

Notices

8.08

- (a) Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given when delivered personally at the appropriate address set forth in Article 8.08(b) of this Declaration, or seventy-two (72) hours after deposit in any United States post office box, postage prepaid, addressed as set forth in Article 8.08(b) of this Declaration.
- (b) Any notice to an Owner required under this Declaration shall be addressed to the Owner at the last address for the Owner appearing in the records of the Association or, if there is none, at the address of the Unit in the Project. Notice to the Association shall be addressed to the address designated by the Association by written notice to all Owners. Notices to the Manager shall be addressed to the address designated by the Manager. Notices to Declarant shall be addressed to P O Box 1355, Galveston, Texas 77553-1355.

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

ARTICLE 9

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Notwithstanding anything to the contrary contained herein, Declarant reserves to itself the following "Special Declarant Rights"


- (a) The right to create units by combining any two or more Commercial Units
- (b) The right to create Common Elements or Limited Common Elements
- (c) The right to subdivide or convert units into common elements or limited common elements

Additionally, Declarant reserves to itself the following "Special Declarant Rights"

- (a) The right to complete improvements indicated on plats and plans filed with the Declaration,
- (b) The right to exercise any development right,
- (c) The right to maintain sales, management, and leasing offices, signs advertising the condominium, and models
- (d) The right to appoint or remove any officer or board member of the association during any Declarant control period
- (e) The right to use easements through the common elements for the purpose of making improvements within the condominium or within property that may be added to the condominium



DAVID P. MASSICOTT



ROGER M. MASSICOTT

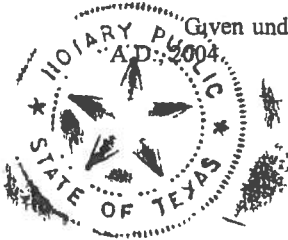
THE STATE OF TEXAS

§
§
§

COUNTY OF GALVESTON

Before me Stephen G. Schulz on this day personally appeared **DAVID P. MASSICOTT**, known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed

Given under my hand and seal of office this 12th day of July, A.D., 2004



Stephen G. Schulz
Notary Public in and for the State of Texas
My Commission Expires 4/2/2005

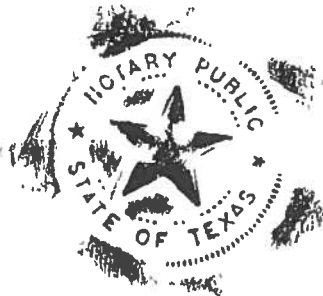
THE STATE OF TEXAS

§
§
§

COUNTY OF GALVESTON

Before me Stephen G. Schulz on this day personally appeared **ROGER M. MASSICOTT**, known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 12th day of July, A.D., 2004

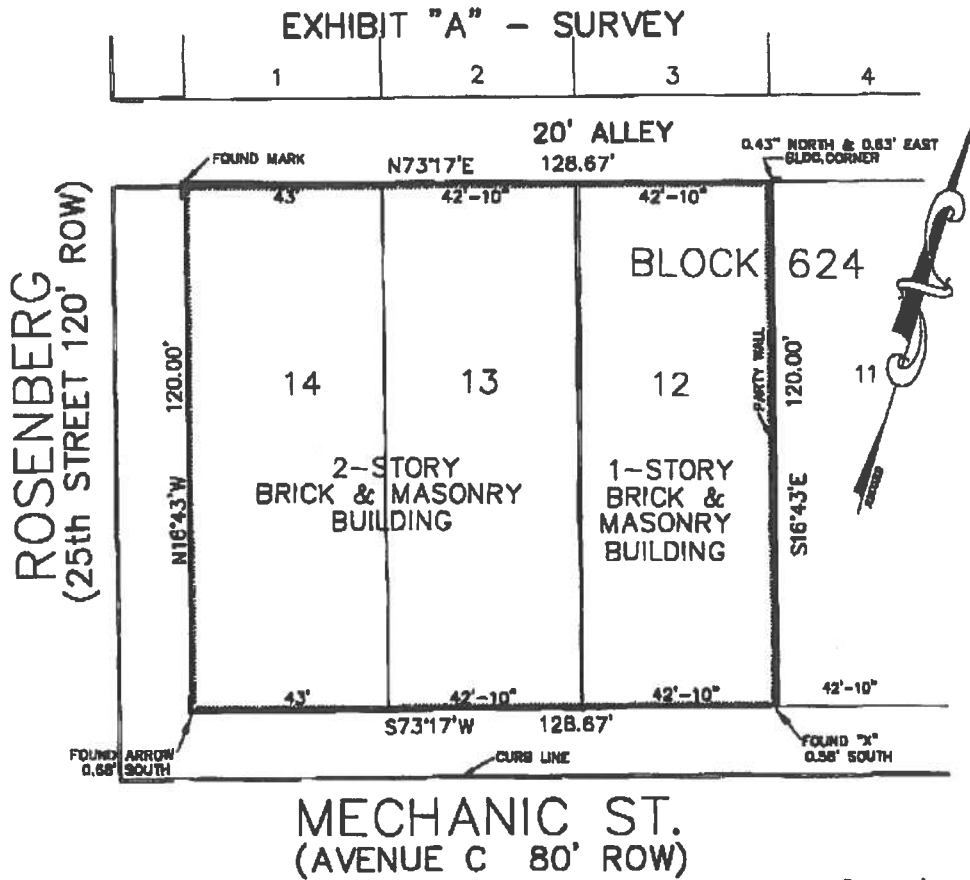


Stephen G. Schulz
Notary Public in and for the State of Texas
My Commission Expires 4/2/2005

After Recording, Please Return To

Stephen G Schulz
Greer, Herz & Adams, L L P
One Moody Plaza, 18th Floor
Galveston, Texas 77550

PAID



May 25, 2004

Scale: 1" = 30'

Survey of Lots Twelve (12), Thirteen (13) and Fourteen (14) in Block Six-Hundred, Twenty-four (624) in the City and County of Galveston, Texas, according to the map of the City of Galveston in common use.

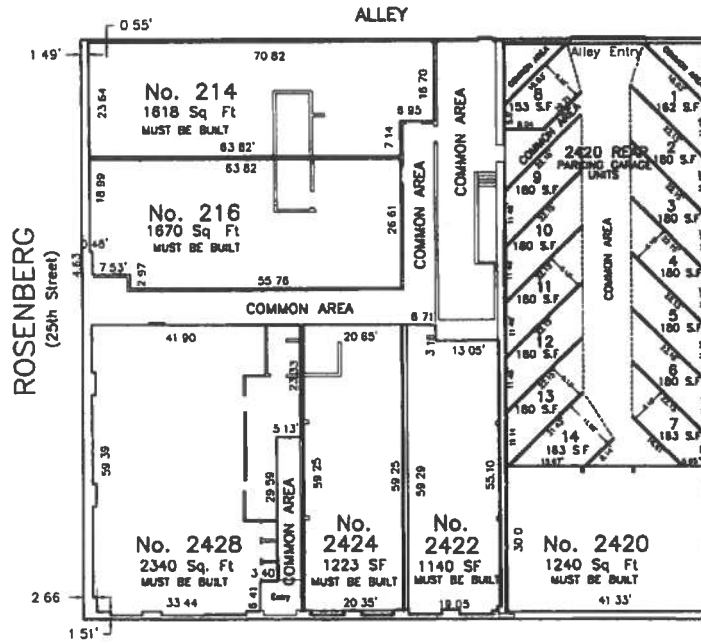
I hereby certify that on the above date, the above property together with improvements located thereon was surveyed on the ground, under my direction, and that the above map together with dimensions as shown is true and correct as of the above date.

COASTAL SURVEYING OF TEXAS

Andrew Johnson, Jr.
Registered Professional Land Surveyor No. 1530
P. O. Box 877 Galveston, Texas 77553
Ph 409 740 1517 Fax 740 0377

Note: The above property does lie within the 100 year flood plain as determined by the U. S Department of Housing and Urban Development.

EXHIBIT "B" - FIRST FLOOR



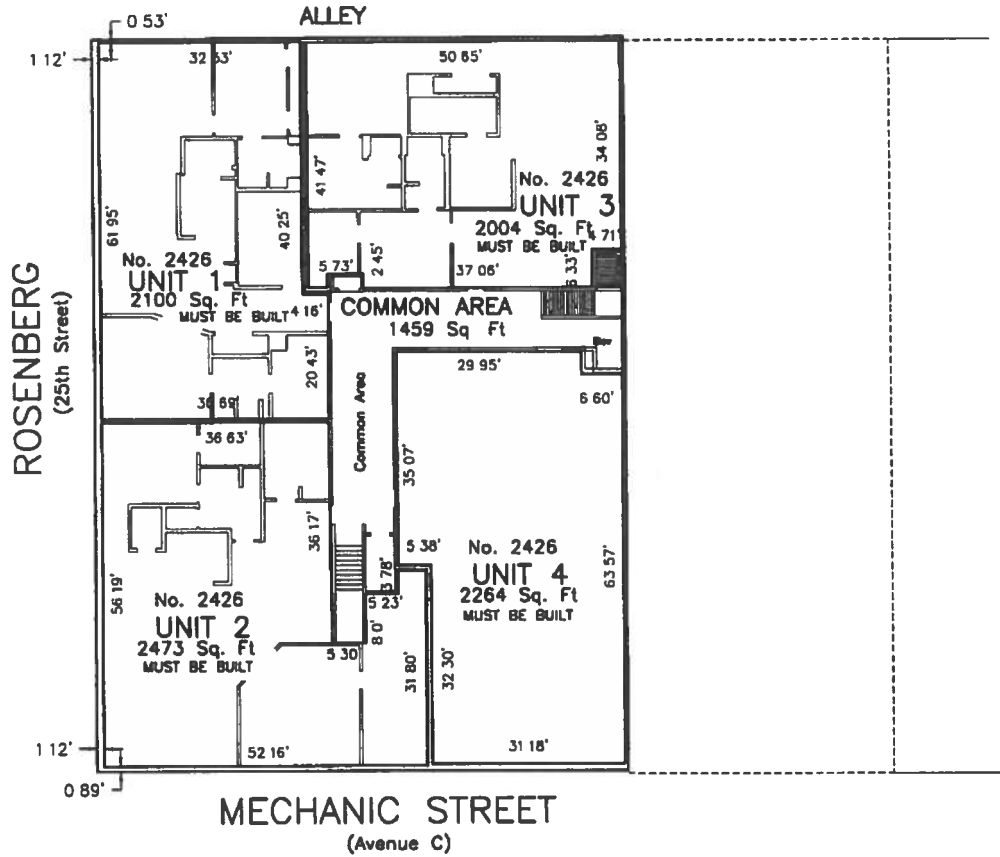
MECHANIC STREET (Avenue C)

FIRST FLOOR ELEVATION = 5.93' NAVD '88
VERTICAL UNIT HEIGHT = 13.3'

AREAS:

No. 214 ROSENBERG		1618 Sq. Ft
No. 216 ROSENBERG		1670 Sq. Ft
No. 2420 MECHANIC		1240 Sq. Ft
No. 2422 MECHANIC		1140 Sq. Ft.
No. 2424 MECHANIC		1223 Sq. Ft.
No. 2428 MECHANIC		2340 Sq. Ft
No. 2420 MECHANIC (REAR) #1		162 Sq. Ft
No. 2420 MECHANIC (REAR) #2		180 Sq. Ft
No. 2420 MECHANIC (REAR) #3		180 Sq. Ft
No. 2420 MECHANIC (REAR) #4		180 Sq. Ft
No. 2420 MECHANIC (REAR) #5		180 Sq. Ft
No. 2420 MECHANIC (REAR) #6		180 Sq. Ft
No. 2420 MECHANIC (REAR) #7		163 Sq. Ft
No. 2420 MECHANIC (REAR) #8		153 Sq. Ft
No. 2420 MECHANIC (REAR) #9		180 Sq. Ft
No. 2420 MECHANIC (REAR) #10		180 Sq. Ft
No. 2420 MECHANIC (REAR) #11		180 Sq. Ft
No. 2420 MECHANIC (REAR) #12		180 Sq. Ft
No. 2420 MECHANIC (REAR) #13		180 Sq. Ft
No. 2420 MECHANIC (REAR) #14		163 Sq. Ft

EXHIBIT "B" – SECOND FLOOR



SECOND FLOOR ELEVATION = 23.13' NAVD '88
 VERTICAL UNIT HEIGHT = 13.6'

AREAS:

No. 2426 MECHANIC	– UNIT 1	2100 Sq. Ft
No. 2426 MECHANIC	– UNIT 2	2473 Sq. Ft
No. 2426 MECHANIC	– UNIT 3	2004 Sq. Ft
No. 2426 MECHANIC	– UNIT 4	2264 Sq. Ft
COMMON AREA		1459 Sq. Ft

EXHIBIT "C"

UNIT	SQ. FEET	PROJECT TOTAL	% OF TOTAL
214 ROSENBERG	1618	20947	7.724
216 ROSENBERG	1670	20947	7.973
2420 MECHANIC	1675	20947	7.996
2422 MECHANIC	1140	20947	5.442
2424 MECHANIC	1223	20947	5.839
2428 MECHANIC	2340	20947	11.171
2426 MECHANIC #1	2100	20947	10.025
2426 MECHANIC #2	2473	20947	11.806
2426 MECHANIC #3	2004	20947	9.567
2426 MECHANIC #4	2264	20947	10.808
2420 MECHANIC (REAR) #1	162	20947	0.773
2420 MECHANIC (REAR) #2	180	20947	0.859
2420 MECHANIC (REAR) #3	180	20947	0.859
2420 MECHANIC (REAR) #4	180	20947	0.859
2420 MECHANIC (REAR) #5	180	20947	0.859
2420 MECHANIC (REAR) #6	180	20947	0.859
2420 MECHANIC (REAR) #7	163	20947	0.778
2420 MECHANIC (REAR) #8	153	20947	0.730
2420 MECHANIC (REAR) #9	180	20947	0.859
2420 MECHANIC (REAR) #10	180	20947	0.859
2420 MECHANIC (REAR) #11	180	20947	0.859
2420 MECHANIC (REAR) #12	180	20947	0.859
2420 MECHANIC (REAR) #13	180	20947	0.859
2420 MECHANIC (REAR) #14	163	20947	0.778
	<u>20947</u>		<u>100.000</u>

EXHIBIT D

PERMITTED USES OF COMMERCIAL UNITS

Advertising signs
Alcoholic beverage consumption, on premises (within)
(establishments having as their principle business the selling of food)
Antique shop
Art gallery
Art supply store
Bakery or confectionery shop (retail only)
Bank or savings and loan office
Book and stationery store
Cafeteria or restaurant
Camera shop
Cleaning or laundry pick-up station
Department store
Drugstore or pharmacy
Florist Shop
Furniture or appliance store
Garden shop and plant sales
Grocery Store
Handcraft and art object sale
Hardware store
Hobby shop
Institution, religious or philanthropic nature
Key shop
Letter or mimeograph shop
Library, art gallery or museum
Lithographer or print shop
Offices, professional or general business
Optical shop or laboratory
Package store
Personal custom services
Place of private assembly
Provisioning and recreational sporting goods sales
Public administrative offices
Radio or TV transmitting station, commercial
Souvenir and sporting goods sales
Retail shops
Shoe repair
Studio, decorator and display of art objects
Studio, health reducing or similar services
Studio, photographer, artist, music, drama, dance
Telephone business office

Exhibit D (cont'd)

Trade or commercial school
Travel bureau or consultant
Variety store

The following uses are a permitted use of any Commercial Unit, however such uses may only be made after such use has been approved for issuance of a specific use permit by the appropriate municipal authority

Bakery, wholesale (with storefront retail required)
Clothing manufacturing (with storefront retail required)
Community Center
Storage warehouse
Wholesale office, storage or sales

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

Mary Ann Daigle

2004 JUL 12 02:26 PM 2004046417
KERN S \$73.00
Mary Ann Daigle, COUNTY CLERK
GALVESTON, TEXAS

**FIRST AMENDMENT TO
DECLARATION
OF
SHIP'S MECHANIC ROW BUILDING CONDOMINIUM**

WHEREAS, on or about July 12, 2004, SHIP'S MECHANIC ROW BUILDING CONDOMINIUM was adopted by DAVID P. MASSICOTT AND ROGER M. MASSICOTT (collectively referred to as "Declarant"), and recorded under Clerk's File Number 20044046417 in the Official Records of Real Property in Galveston County, Texas (the "Declaration"), pursuant to which SHIP'S MECHANIC ROW BUILDING CONDOMINIUM (collectively, the "Condominium") was established; and

WHEREAS, the Declaration was refiled for record under Clerk's File No. 2004057025 to include the Mortgagee's Consent which had been inadvertently omitted when the Declaration was first filed of record; and

WHEREAS, the undersigned owners own sixty-seven percent (67%) or more interest in the Condominium and/or are the owners of all Units which are affected by the change in uses for Commercial Units and are their respective mortgage holders; and

WHEREAS, Owners and mortgage holders desire to revise the uses to which Commercial Units in the Condominium may be put; and

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged the Declaration hereby is amended in accordance with the following:

1. Exhibit D attached to the Declaration and Refiled Declaration is hereby replaced with the Exhibit D - Revision 1, attached hereto and made a part hereof for all purposes.
2. Except as amended hereby, The Declaration and First Amended Declaration shall remain in full force and effect as originally written.

IN WITNESS WHEREOF, this First Amendment to Declaration has been executed as of the 10th day of January, 2005.



DAVID P. MASSICOTT



ROGER M. MASSICOTT

(Signatures continued on next page)

Cynthia L. Wander
CYNTHIA L. WANDER

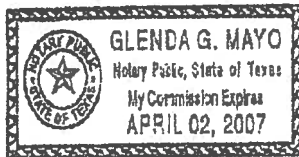
WILLIAMS WAY PARTNERSHIP,
LTD.

By: _____
JOAN WILLIAMS MCLEOD
GENERAL PARTNER

THE STATE OF TEXAS

COUNTY OF GALVESTON

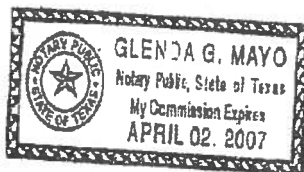
This instrument was acknowledged before me on the 10th day of January, 2005
by DAVID P. MASSICOTT.



Glenda G. Mayo
Notary Public
State of Texas

THE STATE OF TEXAS
COUNTY OF GALVESTON

This instrument was acknowledged before me on the 10th January, 2005 by
ROGER M. MASSICOTT.



Glenda G. Mayo
Notary Public
State of Texas

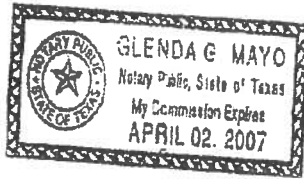
THE STATE OF TEXAS
COUNTY OF GALVESTON

This instrument was acknowledged before me on the 10th day of January,
2005, by JOAN WILLIAMS McLEOD, General Partner of Williams Way Partnership,
Ltd.

Notary Public
State of Texas

THE STATE OF TEXAS
COUNTY OF GALVESTON

This instrument was acknowledged before me on the 10th January, 2005 by
Cynthia L. Wander.



Glenda G. Mayo

Notary Public
State of Texas

**CONSENT TO FIRST AMENDMENT TO
CONDOMINIUM DECLARATION**

THE FROST NATIONAL BANK, and BANK OF AMERICA, N.A. being the owners and holders of the existing liens on and against the land and property described as the Property in the foregoing First Amendment to Declaration, as such mortgagees and lienholders, do consent to the First Amendment to Declaration and the Exhibits attached, and to their recording for submission of the Property to the provisions of Chapter 82 of the Texas Property Code.

This Consent will not be construed or operate as a release or subordination of the mortgages or liens owned and held by the undersigned, or any part of them.

Signed by the undersigned authorized officers of THE FROST NATIONAL BANK and BANK OF AMERICA, N.A. this the _____ day of January, 2005.

THE FROST NATIONAL BANK

BY _____
ALBERT P. SHANNON
MARKET PRESIDENT

BANK OF AMERICA, N.A.

By: _____
Name: _____
Title: _____

**THE STATE OF TEXAS
COUNTY OF GALVESTON**

BEFORE ME, _____, on this day personally appeared ALBERT P. SHANNON, Market President of THE FROST NATIONAL BANK, a national banking association, known to me (or proved to me on oath of _____ or through _____), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this _____ day of January, 2005.

Notary Public
State of Texas

EXHIBIT D – REVISION 1

PERMITTED USES OF COMMERCIAL UNITS

Advertising signs
Antique shop
Art gallery
Art supply store
Bakery or confectionery shop (retail only)
Bank or savings and loan office
Book and stationery store
Cafeteria or restaurant
Camera shop
Cleaning or laundry pick-up station
Department store
Drugstore or pharmacy
Florist Shop
Furniture or appliance store
Garden shop and plant sales
Grocery Store
Handcraft and art object sale
Hardware store
Hobby shop
Institution, religious or philanthropic nature
Key shop
Letter or mimeograph shop
Library, art gallery or museum
Lithographer or print shop
Offices, professional or general business
Optical shop or laboratory
Package store
Personal custom services
Place of private assembly
Provisioning and recreational sporting goods sales
Public administrative offices
Radio or TV transmitting station, commercial
Souvenir and sporting goods sales
Retail shops
Shoe repair
Studio, decorator and display of art objects
Studio, health reducing or similar services
Studio, photographer, artist, music, drama, dance
Telephone business office

Exhibit D – Revision 1 (cont'd)

Trade or commercial school
Travel bureau or consultant
Variety store

The following uses are a permitted use of any Commercial Unit; however such uses may only be made after such use has been approved for issuance of a specific use permit by the appropriate municipal authority:

Bakery, wholesale (with storefront retail required)
Clothing manufacturing (with storefront retail required)
Community Center
Storage warehouse
Wholesale office, storage or sales.

The following uses of commercial units are hereby expressly prohibited:

1. Sexually oriented businesses;
2. Automobile or mechanic repair facility of any type;
3. Any food service or food preparation facility that necessitates the use of a grease trap or requires the issuance of a liquor license of any type.

Furthermore, the operation of any commercial business in any Commercial Unit shall adhere to the following:

1. Hours of operation must be limited to the hours of 7:00 a.m. to 11:00 p.m., seven days per week.
2. The level of noise and number of patrons of any business must not significantly impair the peace and quiet and enjoyment of the other residents. The determination of these matters shall be the responsibility of the Board of Directors of the Association and its discretion in these matters shall be final in each case where these matters are at issue.

CONSENT TO FIRST AMENDMENT TO
CONDIMIMUM DECLARATION

THE FROST NATIONAL BANK, being the owner and holder of multiple existing liens on and against the land and property described as the Property in the foregoing Declaration, as such mortgagee and lienholder, does consent to the Second Amendment to Declaration and the Exhibits attached, and to their recording for submission of the Property to the provisions of Chapter 82 of the Texas Property Code.

This Consent will not be construed or operate as a release or subordination of the mortgages or liens owned and held by the undersigned, or any party of them.

Signed by the undersigned authorized officer of THE FROST NATIONAL BANK, this the 7th day of Jan, 2005

THE FROST NATIONAL BANK

BY 
ALBERT P. SHANNON
MARKET PRESIDENT

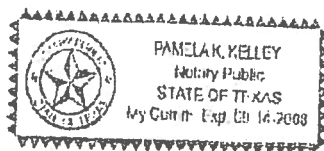
THE STATE OF TEXAS

COUNTY OF GALVESTON

BEFORE ME, Pamela K. Kelley, on this day personally appeared ALBERT P. SHANNON, Market President of THE FROST NATIONAL BANK, a national banking association, known to me (or proved to me on oath of _____ or through _____), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this 7th day of Jan, 2005.

Pamela K. Kelley
Notary Public
State of Texas



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dwight D. Sullivan

2013 Nov 27 02:40 PM Fee: \$ 105.00

2013073734

DWIGHT D. SULLIVAN, COUNTY CLERK
GALVESTON COUNTY TEXAS

BYLAWS

BYLAWS OF SHIP'S MECHANIC ROW BUILDING, OWNERS ASSOCIATION, INC.

ARTICLE 1

DEFINITIONS

1.01. Project shall mean all of the real property located in the City of Galveston, County of Galveston, State of Texas, including the land; all improvements and structures on the land; and all easements, rights, and appurtenances to the land, more particularly described as follows:

Lots 12-14, Block 624, in the City and County of Galveston, Texas

1.02. Declaration shall mean the Declaration applicable to the Project and filed in the Office of the County Clerk of Galveston County, State of Texas, on July 12, 2004 under Clerk's File Number 2004046417, including any amendments to the Declaration as may be made from time to time in accordance with the Texas Uniform Condominium Act.

1.05. Other terms used in these Bylaws shall have the meaning given them in the Declaration, incorporated by reference and made a part of these Bylaws.

ARTICLE 2

APPLICABILITY OF BYLAWS

2.01. The provisions of these Bylaws constitute the Bylaws of the nonprofit corporation known as Ship's Mechanic Row Building Owners' Association, Inc., referred to as the "Association".

2.02. The provisions of these Bylaws are applicable to the Project as defined in Paragraph 1.01 of these Bylaws.

2.03. All present or future owners, present or future tenants, their employees, or other persons that use the facilities of the Project in any manner are subject to the regulations set forth in these Bylaws. The acquisition or rental of any of the Units of the Project, or the act of occupancy of any of the Units, will signify that these Bylaws are accepted and ratified and will be complied with by the purchaser, tenant, or occupant.

ARTICLE 3

OFFICES

3.01. The principal office of the Association shall be located in the City of Galveston, County of Galveston, State of Texas.

3.02. The Association shall have and shall continuously maintain in the State of Texas a registered office and a registered agent, whose office shall be identical with the registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE 4

QUALIFICATIONS FOR MEMBERSHIP

4.01. The membership of the Association shall consist of all of the Owners of the Units within the Project.

4.02. The rights of membership shall not be exercised by any person until satisfactory proof has been furnished to the Secretary of the Association that the person is qualified as a Member. Such proof may consist of a copy of a duly executed and acknowledged deed or title insurance policy evidencing ownership of a Unit in the Project. Such deed or policy shall be deemed conclusive in the absence of a conflicting claim based on a later deed or policy.

4.03. The sole qualification for membership shall be the ownership of a Unit in the Project. No initiation fees, costs, or dues shall be assessed against any person as a condition of membership except such assessments, levies, and charges as are specifically authorized under the Articles of Incorporation or the Declaration.

4.04. The Board of Directors may provide for the issuance of certificates evidencing membership in the Association that shall be in such form as may be determined by the Board. All certificates evidencing membership shall be consecutively numbered. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Association and maintained by the Secretary at the registered office of the Association.

ARTICLE 5

VOTING RIGHTS

5.01. Voting rights shall be allocated among the Members on the basis of the formulas and allocations set forth in the Declaration.

5.02. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease on conveyance by the Member of the Member's Unit or on receipt of notice by the Secretary of the death or judicially declared incompetence of such Member. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise specifically provided in the proxy.

5.03. The presence, either in person or by proxy, at any meeting, of Members entitled to cast at least ten percent (10%) of the total voting power of the Association shall constitute a quorum for any action, except as otherwise provided in the Governing Instruments. In the absence of a quorum at a meeting of Members, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five (5) or more than thirty (30) days from the meeting date.

5.04. The vote of the majority of the votes entitled to be cast by the Members present, or represented by proxy, at a meeting at which a quorum is present shall be the act of the meeting of Members, unless the vote of a greater number is required by statute or by the Declaration, by the Articles of Incorporation of this Association, or by these Bylaws.

ARTICLE 6

MEETINGS OF MEMBERS

6.01. The first meeting of the Members of the Association shall be held within ninety (90) days after the closing of the sale of the Unit that represents the fifty-first (51st) percentile interest or within one year after the closing of the sale of the first Unit within the Project, whichever is earlier. After the first meeting, the annual meeting of the Members of the Association shall be held on the first Monday of August of each succeeding calendar year at the hour of 7:00 p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting shall be held at the same hour on the first day following that is not a legal holiday or a Saturday or Sunday.

6.02. Special meetings of the Members may be called by the President, the Board of Directors, or by Members representing at least twenty-five (25) percent of the total voting power of the Association.

6.03. Meetings of the Members shall be held within the Project or at a meeting place as close to the Project as possible, as the Board may specify in writing.

6.04. Written notice of all Members' meetings shall be given by or at the direction of the Secretary of the Association or such other persons as may be authorized to call the meeting, if mailing or personally delivering a copy of such notice at least ten (10) but not more than fifty (50) days before the meeting to each Member entitled to vote at the meeting. The notice must be addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. The notice shall specify the place, day, and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken.

6.05. The order of business at all meetings of the Members shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meetings or waiver of notice
- (c) Reading of Minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Election of directors.
- (g) Unfinished business.
- (h) New business.

6.06. Any action required by law to be taken at a meeting of the Members or any action that may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members and filed with the Secretary of the Association.

ARTICLE 7

BOARD OF DIRECTORS

7.01. The affairs of this Association shall be managed by a Board of Directors consisting of three (3) persons, all of whom must be Members of the Association, except for the initial Members of the Board whom need not be Members of the Association.

7.02. At the first meeting of the Association, the Members shall elect the initial Directors who shall hold office until the first annual election of Directors by the Members. After the first meeting of the Association, Directors shall be elected at the annual meeting of the Members and shall hold office for a term of one (1) year and until their successors are elected and qualified.

7.03. Directors may be removed from office with cause by a majority vote of the Members of the Association.

7.04. In the event of a vacancy on the Board caused by the death, resignation, or removal of a Director, the remaining Directors shall, by majority vote, elect a successor who shall serve for the unexpired term of the predecessor.

Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting of Members or at a special meeting of Members called for that purpose.

7.05. With the prior approval of a majority of the voting power of the Association, a Director may receive compensation in a reasonable amount for services rendered to the Association. A Director may be reimbursed by the Board for actual expenses incurred by the Director in the performance of the Director's duties. See Paragraph 10.5

7.06. The Board shall have the powers and duties, and shall be subject to limitations on such powers and duties, as enumerated in the Governing Instruments of the Project.

ARTICLE 8

NOMINATION AND ELECTION OF DIRECTORS

8.01. Nomination for election to the Board of Directors shall be made from the floor at the annual meeting of the Members.

8.02. Directors are elected at the annual meeting of Members of the Association. Members, or their proxies, may cast, in respect to each vacant directorship, as many votes as they are entitled to exercise under the provisions of the Declaration. The nominees receiving the highest number of votes shall be elected.

ARTICLE 9

MEETINGS OF DIRECTORS

9.01. Regular meetings of the Board of Directors shall be held annually at a place within the Project and at a time as may be fixed from time to time by resolution of the Board. Notice of the time and place of regular meetings shall be posted at a prominent place or places within the Common Elements.

9.02. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any two (2) Directors other than the President. The notice shall specify the time and place of the meeting and

the nature of any special business to be considered. Notice of a special meeting must be given to each Director not less than three (3) days or more than ten (10) days prior to the date fixed for such meeting by written notice either delivered personally, sent by mail, or sent by telegram to each Director at the Director's address as shown in the records of the Association. A copy of the notice shall be posted in a prominent place or places in the Common Elements of the Project not less than three (3) days prior to the date of the meeting.

9.03. A quorum for the transaction of business by the Board of Directors shall be the lesser of either a majority of the number of Directors constituting the Board of Directors as fixed by these Bylaws or not less than Fifty (50) Percent of votes on the Board.

9.04. The act of the majority of Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless any provision of the Declaration, the Articles of Incorporation of this Association, or these Bylaws requires the vote of a greater number.

9.05. Regular and special meetings of the Board shall be open to all Members of the Association, provided, however, that Association Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of a majority of a quorum of the Board.

9.06. The Board may, with the approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote on personnel matters, litigation in which the Association is or may become involved, contract negotiations, enforcement actions, other business of a confidential nature involving a Member, and matters requested by the involved parties to remain confidential. The nature of any and all business to be considered in executive session shall first be announced in open session.

ARTICLE 10

OFFICERS

10.01. The Officers of this Association shall be a President, a Secretary, and a Treasurer who shall at all times be members of the Board of Directors. The Board of Directors may, by resolution, create such other offices as it deems necessary or desirable.

10.02. The Officers of this Association shall be elected annually by the Board of Directors and each shall hold office for a term of one (1) year, unless the Officer shall sooner resign, be removed, or be otherwise disqualified to serve.

10.03. Any Officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Any Officer may be removed from office by the Board whenever, in the Board's judgment, the best interests of the Association would be served by such removal.

10.04. Any two or more offices may be held by the same person, except the offices of President and Secretary.

10.05. Officers shall not receive compensation for services rendered to the Association. See Paragraph 7.05.

ARTICLE 11

PRESIDENT

11.01. At the first meeting of the Board immediately following the annual meeting of the Members, the Board shall elect one of their number to act as President.

11.02. The President shall perform the following duties.

(a) Preside over all meetings of the Members and of the Board.

(b) Sign as President all deeds, contracts, and other instruments in writing that have been first approved by the Board, unless the Board, by duly adopted resolution, has authorized the signature of another Officer.

(c) Call meetings of the Board whenever he or she deems it necessary in accordance with rules and on notice agreed to by the Board. The notice period shall, with the exception of emergencies, in no event be less than three (3) days.

(d) Have, subject to the advice of the Board, general supervision, direction, and control of the affairs of the Association and discharge such other duties as may be required of him or her by the Board.

(e) Prepare, execute, certify, and have recorded all amendments to the Declaration required by statute to be recorded by the Association.

ARTICLE 12

SECRETARY

12.01. At the first meeting of the Board immediately following the annual meeting of the Members, the Board shall elect a Secretary.

12.02. The Secretary shall perform the following duties:

(a) Keep a record of all meetings and proceedings of the Board and of the Members.

(b) Keep the seal of the Association, if any, and affix it on all papers requiring the seal.

(c) Serve notices of meetings of the Board and the Members required either by law or by these Bylaws.

(d) Keep appropriate current records showing the Members of the Association together with their addresses.

(e) Sign as Secretary all deeds, contracts, and other instruments in writing that have been first approved by the Board if the instruments require a second Association signature, unless the Board has authorized another Officer to sign in the place and stead of the Secretary by duly adopted resolution.

(f) With the President, prepare, execute, certify, and have recorded all amendments to the Declaration required by statute to be recorded by the Association.

ARTICLE 13

TREASURER

13.01. At the first meeting of the Board immediately following the annual meeting of the Members, the Board shall elect a Treasurer.

13.02. The Treasurer shall perform the following duties.

(a) Receive and deposit in a bank or banks, as the Board may from time to time direct, all of the funds of the Association.

(b) Be responsible for and supervise the maintenance of books and records to account for the Association funds and other Association assets.

(c) Disburse and withdraw funds as the Board may from time to time direct, in accordance with prescribed procedures.

(d) Prepare and distribute the financial statements for the Association required by the Declaration.

ARTICLE 14

BOOKS AND RECORDS

14.01. Complete and correct records of account and minutes of proceedings of meetings of Members, Directors, and committees shall be kept at the registered office of the corporation. A record containing the names and addresses of all Members entitled to vote shall be kept at the registered office or principal place of business of the Association.

14.02. The Governing Documents of the Project, the membership register, the books of account, and the minutes of proceedings shall be available for inspection and copying by any Member of the Association or any Director for any proper purpose at any reasonable time.

ARTICLE 15

GENERAL PROVISIONS

15.01. These Bylaws may be amended, altered, or repealed at a regular or special meeting of the Members of the Association by the affirmative vote in person or by proxy of Members representing a majority of a quorum of the Association. Notwithstanding the above, the percentage of affirmative votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

15.02. Adopted by the Board of Directors on the 12th day of July 2004,
2004.

Attest: David Mansell
Secretary