

CAPTAIN'S COVE RESORT

DECLARATION ESTABLISHING A CONDOMINIUM REGIME,

COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS *

* KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GALVESTON*

That this DECLARATION is made this 15th day of April, 1983, by Sunward Developers, Inc., a Texas corporation, acting herein by and through its duly authorized officers, with its principal office in Galveston County, Texas, and Dwelling Development, Inc., a Texas corporation, acting herein by and through its duly authorized officers, with its principal office in Galveston County, Texas, hereinafter jointly referred to as "Developer", pursuant to the provisions of Article 1301a Of the Revised Civil Statutes of the State Of Texas ("the Condominium Act".)

RECITALS

A. Developer Dwelling Development, Inc. is the owner of that certain parcel of real property described in Exhibit "A" attached hereto and made a part hereof for all purposes, hereinafter sometime referred to as "the Land"; and

B. Developer has executed a plot plan showing the location of the Building(s) and other improvements constructed or to be constructed on the Land, a true and correct copy of which is attached hereto as Exhibit "B", which is a part hereof for all purposes; and

C. Developer has executed plans for Building(s) existing or to be constructed on the Land that contain Units located, designated, and described in Exhibit "C" attached hereto and a part hereof for all purposes; and

D. Developer intends submit the Land, the Building(s), all improvements and structures constructed or to be constructed thereon, subject to uses, covenants, conditions, restrictions, easements, charges, liens, and limitations to a Condominium Regime in the manner provided by the Condominium Act, and as covenants running with the land;

NOW, THEREFORE, Developer does hereby declare that the Land, the Building(s) all improvements and structures constructed or to be constructed thereon, to be subject to the uses, covenants, conditions, restrictions, easements, charges, liens, and limitations set forth herein, as covenants running with the land, are hereby submitted to a Condominium Regime pursuant to the Condominium Act, for the declared purposes of enhancing the desirability, attractiveness, and value of the Condominium Project, for the use and benefit of and to be binding upon all parties having or acquiring any right, title, or interest therein or any part thereof, their successors, and assigns:

WITNESSETH:

ARTICLE I
DEFINITIONS AND DESCRIPTIONS

As used in this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Exhibits attached hereto, and all amendments thereof, unless the context requires otherwise, the following definitions shall prevail:

1.01 "Association," means the Texas non-profit corporation (existing or to be created), the member of which shall be all Unit Owners; and it shall be and perform as the 'Council of co-owners' under the Condominium Act. The name of the Association is: Captain's Cove Resort Association. A copy of the Articles of Incorporation of the Association is attached hereto as Exhibit "G".

1.02 "Association Properties," means that real and personal property owned by the Association.

1.03 "Board of Directors," means the board of directors of the Association.

1.04 "Building(s)," means the principal structure(s) erected or to be erected upon the Land in the location(s) shown on Exhibit "B" and as further described in Exhibit "C", each Building being denoted by Letter, viz: A, B, and C.

1.05 "Bylaws," means the bylaws of the Association, as amended from time to time, and shall be understood to be the 'bylaws' referred to in the Condominium Act. A copy of the Bylaws are attached hereto as Exhibit "H".

1.06 "Common Elements," mean all portions of the condominium Project, except the Units, and consists of the General Common Elements and the Limited Common Elements. Common Elements shall include the Association Properties.

1.07 "Condominium," means the separate ownership of Units in the Building(s) together with an undivided share of the Common Elements as an appurtenant thereto.

1.08 "Condominium Project," means this real estate project whereby 51 Units in existing or proposed Building(s) are offered or proposed to be offered for sale; the name of which is: captain's Cove Resort.

1.09 "Declaration, " means this document establishing the property as a condominium regime, as it may be amended from time to time.

1.10 "Developer," means the person named hereinabove who undertakes to develop the Condominium Project referred to herein.

1.11 "General Common Elements," means and includes:

- 1) The Land on which the Building(s) stand(s);
- 2) The foundations, bearing walls and columns, the floor between each floor located within a Unit, roofs, halls, lobbies, stairways, and entrances and exits or communication ways;
- 3) The yards and gardens, if any;
- 4) The premises for the lodging of persons in charge of management or care Of the Condominium Project;
- 5) The compartments or installation of central services such as electricity, natural gas, hot and cold water, sanitary sewers, central television systems, telephone systems, reservoirs, tanks, pumps, and swimming pool.
- 6) The devices or installations existing or acquired for common use;
- 7) All other elements Of the Building(s) desirable or rationally of common use or necessary to the existence, maintenance, and safety of the condominium regime.

1.12 "Limited Common Elements," means and includes those Common Elements reserved for the use of a certain Unit or number of Units to the exclusion of the other Units some of which elements are so designated in Exhibits "B", and "C".

- 1) Where any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portions thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit, or any portion of the Common Elements is a part of the General Common Elements.

- 2) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

1.13 "Majority of Unit Owners," means the same as 'majority of co-owners' in the Condominium Act and is the Unit Owners with 51% or more of the votes weighed so as to coincide with percentages assigned in Exhibit "D" attached and a part hereof.

1.14 "Management Agreement," means and refers to that agreement between the Association and the Management Firm, a copy of which agreement is attached hereto as Exhibit "F".

1.15 "Management Firm", means and refers to the entity identified as the Manager in the Management Agreement.

1.16 "Member," means the Unit Owner as member of the Association.

1.17 "Mortgagee," means the holder of promissory note, the payment of which is secured by a first lien deed of trust (mortgage) of a Unit.

1.18 "Occupant," means a person, or persons, other than a Unit Owner, in possession of a Condominium Unit.

1.19 "Percentage Interest," means the percentage interest which a Unit bears to the total percentage interest of all Units, the sum of all such percentage interest being 100%. The Percentage Interest of each Unit is designated in Exhibit "D" attached and a part hereof.

1.20 "Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof.

1.21 "Property," means and includes the Land and the Building (s), all improvements and structures thereon and all easements, rights and appurtenances belonging thereto.

1.22 "To Record," or "Record," means to record in the office of the County Clerk of the county in which the Property is situated, in accordance with the provisions of Title 115, Revised Civil Statutes of Texas, 1925, as amended.

1.23 "Unit," is the same as 'apartment' under the Condominium Act, and means an enclosed space consisting of one (1) or more floors or stories and having a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

1) The boundaries of a Unit shall be and are the unfinished/undecorated interior surfaces of its perimeter walls, floors, and ceilings; and the Unit includes the airspace so encompassed, excepting Common Elements.

2) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements.

3) All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

4) In interpreting deeds, mortgages, deeds of trust, and other Instruments, the existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries regardless of settling, rising, or lateral movement of the Building and regardless of variances between boundaries shown on the plat and those of the Building.

5) The Units are shown and designated by Numbers in Exhibits "B" and/or "C".

1.24 "Unit Owner," or "Owner," means the same as 'co-owner' in the Condominium Act and is the person who owns a Unit and a Percentage Interest of the Common Elements within this Condominium Project, but does not include a person having an interest in a Unit solely as security for an obligation.

ARTICLE II USE AND OCCUPANCY RESTRICTIONS

The restrictions on the use and occupancy of the Property shall be as follows:

2.01 RESIDENTIAL AND RESORT USE. The owner of a Unit shall occupy and use his unit as residential and resort dwelling for himself and members of his family, his social guests, lessees, and for no Other purposes.

2.02 PROHIBITED ACTS. A Unit Owner shall not permit or suffer anything to be done or kept in his Unit, the Limited Common Elements, or the General Elements which:

- 1) Will increase the rate of insurance in the property;
- 2) Will result in the cancellation of insurance on any Unit or any part of the Property;
- 3) Will obstruct or interfere with the rights of other Unit Owners;
- 4) Will be in violation of any law, the Declaration, Bylaws, or Rules and Regulations;
- 5) Will commit any waste in any part of the property;
- 6) Would be noxious or offensive to a reasonable person;

7) May be or become an annoyance or nuisance to other Unit Owners.

2.03 COMMON ELEMENTS. The Limited Common Elements and the General Common Elements shall not be used in any manner contrary to or not in accordance with such rules and Regulations pertaining thereto.

2.04 MINERAL OPERATIONS. No gas or oil drilling, development, or refining nor quarrying or mining operations of any kind shall be permitted upon any part of the property.

2.05 CONSTRUCTION IN COMMON ELEMENTS. Nothing shall be altered or constructed in or removed from the Common Elements, except upon prior written consent of the Association and its Rules and Regulations, as amended from time to time, a Unit Owner shall not cause or permit on the exterior of his unit, Limited Common Elements, or the General Common Elements outside his Unit any of the following;

- 1) An observable immaterial thing (including signs and displays);
- 2) Ground cover, plant, shrubbery, flower, or vine;
- 3) Awnings, storm-shutters, screens, or window coverings; and
- 4) Furniture, appliance, or equipment.

(See also Article VI).

2.06 USE FOR SALES PURPOSES. Developer may maintain models, sales, and administrative offices in any of the Units owned by Developer; may maintain signs, displays and sales office on the Common Elements to aid in the sale of the Units; may use portions of the property and Association properties for parking for prospective purchasers and other invitees of Developer.

ARTICLE III PROPERTY RIGHTS AND INTERESTS

3.01 CONVEYANCE AND ENCUMBRANCE OF UNITS. A Unit may be individually conveyed and encumbered and may be the subject of ownership, possession, or sale and of all types of judicial acts, as if it were entirely independent of the other units in the Condominium project.

- 3.02 JOINT OR COMMON OWNERSHIP OF UNIT. Any Unit may be jointly or commonly owned by more than one person.
- 3.03 OWNERSHIP OF UNIT AND SHARE IN COMMON ELEMENTS. An Owner shall have an exclusive ownership to his Unit and shall have a common right to share, with other Owners, in the Common Elements of the Property. Each unit Owner's share in the Common Elements shall be according to the Percentage Interest shown in Exhibits "D". Each Owner may use the Common Elements in accordance with the purpose for which they are intended, as Shown on Exhibit "B" and Exhibit "C" or expressed in this Declaration, the Bylaws, or the Rules and Regulations, without hindering or encroaching upon the lawful rights of the other Owners.
- 3.04 COMMON ELEMENTS; PARTITION; MORTGAGES. The Common Elements, both General and Limited, shall remain undivided and shall not be the object of any action for partition or division of the co-ownership by the Unit Owners so long as suitable for a Condominium Regime; and, in any event, all mortgages must be paid prior to the bringing of an action for partition or the consent all mortgagees must be obtained. Any covenant or action to the contrary shall be void.
- 3.05 DEED OF UNIT. The deed to each Unit shall describe the Unit in accordance with a reference to the Exhibits included in this Declaration and the Percentage Interest therein conveyed. An individual Unit shall not be conveyed separate from the undivided interest in the Common Elements and vice versa, and any conveyance of a Unit shall be deemed to also convey the undivided interest of the Owner in the Common Elements, both General and Limited, appertaining to the Unit without specifically or particularly referring to the same.
- 3.06 REGROUPING AND MERGER OF ESTATES. All of the Owners or the sole owner of the Building (s) constituted into this Condominium Regime may waive this regime and request the County Clerk to regroup or merge the records of the filial estates with the principal property, provided, that the filial estates are unencumbered, or, if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors. The undivided interest in

the Property owned in common which shall appertain to each Owner shall be the Percentage Interest previously owned by such Owner in the Common Elements. However, the merger provided for in this Section shall in no way bar the subsequent constitution of the Property provisions of the Condominium Act.

3.07 OWNER'S MAINTENANCE AND REPAIR EASEMENT. Each Owner shall have easements to, through and over the General and Limited Common Elements reasonably necessary to carry his maintenance, repair, and replacement responsibilities hereunder; provided, however, he shall not impair the structural integrity of the Building(s), adversely affect any other Unit, nor alter the external appearance of the Building(s) without prior written consent of the Association.

3.08 ASSOCIATION'S EASEMENT. The Association, or its agent, shall have Easements to, through and over each Unit (upon notice to Owner and during reasonably working times) as may be reasonably necessary to carry out its maintenance, repair, and replacement responsibilities hereunder.

3.09 PUBLIC UTILITY ACCESS. Public or private utility companies furnishing services to the Condominium Project for common use (e.g., water, sanitary sewer, natural gas, electricity, telephones, and television, if any) shall have access to the General and Limited Common Elements and each Unit as may be reasonably necessary for the installation, maintenance, or replacement of such services.

1) The Association shall submit its statement to the holdover owner as provided for hereinabove. In the event the holdover owner fails to pay the same within ten (10) days of the date thereof, a lien shall be and is hereby fixed against the holdover owner's interest in the Unit in accordance with other provisions of this Declaration.

2) The foregoing provisions shall not abridge the Association's rights to take such other action as is provided by this Declaration, or law, including, but not limited to, forcible detainer or other eviction proceedings.

3.10 ASSOCIATION PROPERTIES. As planned, the Association will acquire the Association properties for the common use and benefit of all Unit Owners in the project. The Developer may retain the Legal title to said Association properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer,

the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its heirs and assigns that it shall convey said Association properties to the Association, free and clear of all liens and encumbrances on or before five (5) years after the date Developer conveys any interest in Unit, or upon completion and sale of all units in the Project, whichever shall occur first. Relative to said Association properties:

- 1) The Association agrees that it will accept title to the Properties to be conveyed from the Developer and will hold same for the use and benefit of all Condominium Unit Owners in the Project.
- 2) The Association shall operate and administer such properties, including the collection of any income therefrom and the payment of all costs and expenses incurred therewith. All income shall inure to the benefit of the Association and all such expenses are and shall be common expenses of all the Condominiums in the Project, assessable and collectible by the Association, against all the Unit Owners in the said Project in the manner provided by this Declaration and Bylaws.
- 3) The Owners of Units within the Project, as to the Association properties, shall have in addition to all other rights granted hereunder:
 - a) A perpetual non-exclusive easement in and to the entire road system for ingress and egress to their respective Unit and recreational facilities and other improvements located on the Association properties;
 - b) A perpetual non-exclusive easement in and to portions thereof as may be necessary to provide utility services to their respective Unit; and
 - c) The right to construct and maintain on and to make such changes in the property covered by the above easements as may reasonably be necessary to utilize the easements hereinabove provided.
- 4) The Developer herein, its successors and assigns, shall have such easements in and to the Association properties as may be necessary to provide utility services for other lands in the Project and shall have also the right to use the interior private road system as they may deem necessary from time to time in connection with sales or further development of the said project.

5) All expenses incurred in connection with the maintenance of Association properties, including but not limited to real estate taxes, repair expenses, and upkeep, shall be deemed a common expense of the Association and shall be paid as herein provided.

3.11 DEVELOPER'S RESERVATIONS. The Developer reserves the right to change the interior design and arrangement of all Units and to alter the boundaries between Units, as long as the Developer owns the Units so altered; however, no such alterations shall increase the number of Units nor alter the boundaries of the Common Elements, except the party wall between any Units, without amendment of this Declaration set forth hereinafter. In the event the Developer shall make any such changes in Units, such changes shall be reflected by an Amendment of this Declaration, including such plats and building plans to reflect such alterations.

ARTICLE IV
ADMINISTRATION OF THE CONDOMINIUM REGIME

4.01 IN GENERAL. The administration of this Condominium Regime shall be governed by the Association in accordance with the Condominium Act, this Declaration, the Articles of Incorporation of the Association, and the Bylaws of the Association.

4.02 ORGANIZATION OF ASSOCIATION. The Association shall be organized no later than the date of the Recording of this Declaration (which will be Recorded prior to the recording of the first deed conveying any interest in any Unit from the Developer). The Membership of the Association at all times shall consist exclusively of all the Unit Owners or, following termination of the Condominium Regime, of all former Unit Owners entitled to distributions of proceeds under this Declaration, or their heirs, successors, or assigns. The Association shall be organized as a nonprofit corporation.

4.03 POWERS OF ASSOCIATION. Subject to the provisions of this Declaration, the Association may:

- 1) Adopt and amend Bylaws, Rules, and Regulations;
- 2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Unit Owners;

- 3) Hire and terminate managing agents and other agents, employees, and independent contractors;
- 4) Make contracts and incur liabilities;
- 5) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- 6) Cause additional improvements to be made as a part of the Common Elements;
- 7) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- 8) Grant easements, leases, licenses, and concessions through or over the Common Elements;
- 9) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than Limited Common Elements;
- 10) Impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association;
- 11) Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates, or statements of unpaid assessments;
- 12) Provide for the indemnification of its officers and Board of Directors and maintain directors' and officers' liability insurance;
- 13) Exercise any other powers conferred by the Declaration or Bylaws;
- 14) Exercise all other powers that may be exercised in Texas by non-profit corporations; and
- 15) Exercise any other powers necessary and proper for the governance and operation of the Association.

Notwithstanding the foregoing portion of this Section, this Declaration does not impose limitations on the power of the Association to deal with the Developer that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

4.04 BOARD OF DIRECTORS AND OFFICERS.

- 1) Except as provided in this Declaration, the Bylaws, or in Paragraph (2) hereinafter, or the Condominium Act, the Board of Directors may act in all instances on behalf of the Association.
- 2) The Board of Directors may not act on behalf of the Association to amend this Declaration, to terminate the Condominium Regime, or to elect directors of the Board of Directors or determine the qualifications, powers and duties, or terms of office of the Board of Director members, but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.
- 3) Subject to the provisions in this paragraph (3) Developer shall control the Association, during which period Developer, or persons designated by Developer, may appoint, and remove the officers and members of the Board of Directors. Such period of Developer control extends from the date of the first conveyance of any interest in a Unit to a person other than Developer for a period of five (5) years. Regardless of such five (5) year period the period of Developer control terminates no later than sixty (60) days after conveyance of 95% of the Units to the Unit Owners other than Developer. Developer may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period.
- 4) No later than the termination of any period of Developer control, the unit Owners shall elect a Board of Directors of at least three members, all of whom must be Unit Owners or owners of Unit Weeks. The Board of Directors shall elect the officers. The persons elected shall take office upon election.

4.05 ACTIONS ON BEHALF OF OWNERS. Without limiting the rights of any Owner, action may be brought by the Association, and in the discretion of the Association, on behalf of itself or two (2) or more of the Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements of

more than one (1) Unit.

4.06 BYLAWS. the Bylaws of the Association must provide for:

- 1) The number of directors of the Board of Directors and the titles of the officers of the Association;
- 2) Election by the Board of Directors of a president, treasurer, secretary, and any other officers of the Association the Bylaws specify;
- 3) The qualifications, powers and duties, terms of office, and manner of electing and removing Directors and officers and filling vacancies;
- 4) Which, if any, of its powers the Board of Directors or officers may delegate to other persons or to a managing agent; and
- 5) Which of its officers may prepare, execute, certify, and record amendments to this Declaration on behalf of the Association.

Subject to the provisions of this Declaration, the Bylaws may provide for any other matters the Association deems necessary and appropriate.

4.07 MEETINGS OF MEMBERS. The Bylaws must require that meetings of the Members of the Association be held at least once each year and provide for special meetings. The Bylaws must specify which of the Association's officers, not less than ten (10) nor more than fifty (50) days in advance of any meeting, shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to this Declaration or Bylaws.

4.08 QUORUMS. Quorums for meetings of the Members of the Association and the Board of Directors shall be as follows:

- 1) A quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast 10% of the votes which may be cast for election of the

Board of Directors are present in person or by proxy at the beginning of the meeting.

- 2) A quorum is deemed present throughout any meeting of the Board of Directors if Directors entitled to cast a majority of the votes on that Board of Directors are present at the beginning of the meeting.

4.09 VOTING: PROXIES. The Owner of each Unit Week shall be entitled to one (1) vote. If some individual, corporation, or other entity owns all of a Unit, he shall be entitled to fifty-two (52) votes.

- 1) The vote allocated to a Unit Week may be cast pursuant to a proxy duly executed by a Unit Week Owner. A Unit Week Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation of the person presiding over the meeting of the members of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.
- 2) No votes allocated to a Unit, or Unit Week, owned by the Association may be cast.
- 3) The Bylaws may provide for administrative voting procedures.

4.10 ASSOCIATION AS TRUSTEE. With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

4.11 MANAGEMENT AGREEMENT. The Association has entered into a Management Agreement, a copy of which is annexed hereto as Exhibit "F" and made a part hereof.

The Association has delegated to the Management Firm the power of the Association, through its Board of Directors to

determine the budget, make assessments for common expenses and collect assessments. Each Unit Owner, his heirs, successors, and assigns, shall be bound by said Management Agreement for the purposes therein expressed, including but not limited to:

- 1) Adopting, ratifying, confirming, and consenting to the execution of said Management Agreement by the Association.
 - 2) Covenanting and promising to perform each and every of the covenants, promises, and undertakings to be performed by Unit Owners in the cases provided therefore in said Management Agreement.
 - 3) Ratifying, confirming, and approving each and every provision of said Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.
 - 4) Agreeing that the persons acting as Directors and Officers of the Association entering into such an Agreement have not breached any of their duties or obligations to the Association.
 - 5) It is specifically recognized that some or all of the persons comprising the original Board of Directors of the Association, are or may be stockholders, officers, and Directors of the Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate such Management Agreement, in whole or in part.
 - 6) The acts of the Board of Directors and Officers of the Association in entering into the Management Agreement be and the same are hereby ratified, approved, confirmed, and adopted.
- 4.12 TERMINATION; VOLUNTARY, MAJOR DAMAGE. If 75% of Unit Owners and holders of all liens and mortgages affecting any of the Condominium Parcels executed and duly record an instrument terminating the Condominium Regime, or if "major damage" occurs as defined in the insurance provisions hereunder, said property shall be deemed to be subject to termination and thereafter owned in common by the Unit Owners. The undivided interest in the property owned in common by the Unit Owners shall then become the percentage of the undivided interest previously owned by such Owner in the Common Elements upon termination of the

Condominium Regime.

ARTICLE V
EXPENSES AND ASSESSMENTS

5.01 CONTRIBUTIONS TOWARD EXPENSES. All Owners are bound to contribute pro-rata toward the expense of administration and of maintenance and repair of the Common Elements and toward any other expenses lawfully authorized by the Association. No Owner shall be exempt from contributing toward such expenses for any reason, including, but not limited by way of limitation, waiver of the use of enjoyment of the Common Elements, either General or Limited, or by abandonment of his Unit.

Such expenses, referred to hereinafter as "assessments" and "maintenance fees", are:

- 1) Personal obligations of the Owner of the Unit or Unit Week;
- 2) Subject to interest at the rate of 10% per annum from due date until paid if not fully paid ten (10) days after due date; and
- 3) Subject to a late charge of not less than \$25.00, nor more than \$50.00, as may be determined by the Association, if payment is not fully paid by ten (10) days after due date.

5.02 DEVELOPER EXPENSES. During the period of the sale of the Units, the Developer shall contribute its share of expenses for the Common Elements allocated to unsold Units. After any assessment has been made by the Association, assessments shall be made at least annually and shall be based on a budget adopted at least annually by the Association.

5.03 ALLOCATION OF ASSESSMENTS. Common Expenses shall be assessed against all the Units in accordance with the Percentage Interest allocated to each Unit.

5.04 TYPE OF ASSESSMENTS. The expenses approved by the Association shall be charged to each Owner according to the Percentage Interest of each such Unit and shall be paid at the place designated by the Association. Such charges are referred to herein as "assessments." There may be two types of assessments:

- 1) The Annual assessments shall be for the normal and routine expenses anticipated by the Association, including, but not by way of limitation, the following: Insurance obligated or permitted herein; common utility, repair, maintenance, and replacement expenses; wages, taxes; accounting, legal and management fees; reserve funds for repair and replacements.
- 2) Special assessments shall be for out of the ordinary expenditures approved by the Association and would include capital expenditures, normally, but other extraordinary costs may also be assessed if approved by the Association.

5.05 SPECIAL ASSESSMENTS. The Board of Directors of the Association shall approve proposed special assessments from time to time, in order to meet the obligations of the Condominium Regime. Notice of such approved proposals shall be submitted to the Owners by mail. The Unit Owners, by two-thirds (2/3) vote, may reject any special assessment approved by the Board of Directors, within thirty (30) days after the date the approved proposals are submitted to the Owners.

5.06 ASSESSMENT DATES. Annual assessments and maintenance fees shall be made for each calendar year and shall be billed monthly to the owners of the units. On or before December 31st of each year, the Association shall determine the amount of the assessment of each Owner's Unit for the next calendar year. As soon as is practicable, the Association shall notify each Owner of the amount of said assessment for the next calendar year. Such assessments or fees shall be due and payable as of the date determined, from time to time, by the Association.

5.07 LIMITATIONS. Each year the Association may not increase the Annual Assessments or the Maintenance Fee above the previous year by more than the amount of the direct increases in the costs of insurance, taxes, utilities plus 10% of all other expenses. In the event the Board of Directors recommends such assessments or maintenance fees in excess of the foregoing limitation than such budget shall be submitted by mail to the Members for approval more than thirty (30) days prior to the effective date for such assessment or maintenance fee. To be effective such increased assessment and maintenance fee must be approved by a majority of the votes cast by the Members (See 4.09).

5.08 PAYMENT OF ASSESSMENTS UPON SALE. Upon the sale or conveyance of a Unit, all unpaid assessments against an Owner for his pro-rata share of the expenses approved by the Association, as provided for herein, 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:

- 1) Assessments, liens, and charges in favor of the State and any political subdivision thereof for taxes past due and unpaid on the Unit; and
- 2) Amounts due under duly recorded first mortgages.

5.09 LIEN FOR ASSESSMENTS. The Association shall have and does have a lien on each Unit, together with a lien or security interest on all tangible personal property located within the Unit, against the Unit owner for unpaid assessments, maintenance fees, interest thereon, late payment charges, administrative fees, reasonable attorneys' fees incurred by the Association incident to the collection of such charges or the enforcement of such lien(s), all sums advanced and paid by the Association for taxes and payments on account of mortgages, liens or encumbrances which may be required to be advanced by the Association, in order to preserve and protect its lien(s). When an assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment becomes due. The lien of the Association may be enforced and foreclosed by power of sale pursuant to Article 3810, Revised Civil Statutes of Texas, as amended from time to time. To this end, Developer, for itself, its successors and assigns, for the purpose of securing the payment of the foregoing charges subject to this lien ("the indebtedness"), and in consideration of the uses, purposes, and trusts hereinafter set forth, have granted and by these presents do grant to Willis M. Lucas, Trustee, of Galveston County, Texas, and his substitutes or successors, all Units and / or Unit Week described in this Declaration; to have and to hold the same together with the rights, privileges and appurtenances thereto belonging to the Trustee, and to his substitutes or successors forever. Developer hereby binds itself, its successors and assigns to warrant and forever defend the said premises to the Trustee, his substitutes, or successors and assigns forever, against the claim, or claims, of all persons claiming or to claim the same or any part thereof. This conveyance is made in TRUST to secure the payment of indebtedness provided for in this Declaration payable to the Association ("the Beneficiary" herein) in the amounts and at the times provided for in this Declaration, the Bylaws, bearing interest and for costs and attorneys' fees. Should Developer, its successors and assigns do and perform all of the covenants and

agreements contained in this Declaration and make prompt payment of the indebtedness as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect. Developer, its successors, and assigns agree as follows:

- a) That in the event of default in the payment of any installment, principal, or interest, of the indebtedness hereby secured, in accordance with the terms thereof, then Beneficiary may elect, to declare the entire principal indebtedness hereby secured with all interest accrued thereon and all other sums secured immediately due and payable, and in the event of default in payment of said indebtedness when due and declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or his successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place, and terms of the sale of the above described and conveyed property, then subject to the lien hereof, for at least twenty-one (21) days preceding the date of sale by posting written or printed notice thereof at the Courthouse door of the county where said real property is situated, which notice may be posted by the Trustee acting, or by any person acting for him, and the Beneficiary (the holder of the indebtedness secured hereby) has, at least twenty-one (21) days preceding the date of sale, served written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the indebtedness according to the records of the Beneficiary, by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor's most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service, the Trustee shall sell the above described property, then subject to the lien hereof at public auction in accordance with such notice at the Courthouse door of said county where such real property is situated, on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the property as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the Purchaser or Purchasers, with general warranty binding Grantors, their heirs and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a commission of 5% to himself, which commission shall be due and owing in addition to the attorneys' fees provided for in this Declaration and then to Beneficiary the full amount of principal, interest, attorneys' fees, and other charges due and unpaid on the

indebtedness secured hereby, rendering the balance of the sale price, if any, to Developer, its successors and assigns; and the recitals in the conveyance to the purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Developer, its successors and assigns.

- b) It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or his substitute or successor, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this lien, that he may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, his substitute or successor to sell the property in accordance with the provisions of this Deed of Trust.
- c) Beneficiary shall have the right to purchase at any sale of the property, being the highest bidder and to have the amount for which such property is sold credited on the debt then owing.
- d) Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor trustees successively until the indebtedness hereby secured has been paid in full, or until said property is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein.
- e) In the event any sale is made of the above described property, or any portion thereof, under the terms hereof, Developer, its successors and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of their failure to surrender possession of said property upon demand, the Purchaser, his heirs or assigns, shall be entitled to institute and

maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated.

- 1) A lien under this Section is prior to all other liens and encumbrances on a Unit EXCEPT:
 - a) Mortgages and deeds of trust on the Unit or Unit Weeks securing first mortgage holders and recorded before the due date of the assessment or the due date of the first installment payable on the assessment; and
 - b) Liens for real estate taxes and other governmental assessments or charges against the Unit.
- 2) Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this Section is required.
- 3) Nothing in this Section shall be construed to prohibit actions or suits to recover sums for which this Section creates a lien, or to prohibit the Association from taking a deed in lieu of foreclosure.
- 4) A judgment or decree in any action or suit, brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party.
- 5) The Association shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments to the Developer, to any Unit Owner or group of Owners, or to any third party.
- 6) The Association shall furnish to a Unit Owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his Unit. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner.

5.10 ENFORCEMENT. In addition to the foregoing rights and remedies available to the Association (but in no way limiting such other remedies as may be available to the Association in law or in equity) may pursue any or all of the following as well:

- 1) Institute a personal action against the Owner for such charges;
- 2) Restrict the right of such Owner as to the use of the Common Elements, General or Limited, in such manner as the Association shall deem appropriate.
- 3) Suspend the voting rights of such Owner during the delinquency;
- 4) Discontinue services included in the Common Elements.

5.11 ASSESSMENTS PRIOR TO SUBSEQUENT OCCUPANCY. Except in the case of a Mortgagee's acquisition of a Unit through foreclosure of Mortgagee's lien or deed-in-lieu of foreclosure, any person who acquires any interest in a Unit, including, without limitation, acquisition by operation of law and purchaser at judicial sales, shall not be entitled to occupancy of the Unit or use of the Common Elements until all unpaid assessments due and owing by the former Unit Owners have been paid.

5.12 SURPLUS FUNDS. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves must be credited to the Unit Owners to reduce their future Common Expense assessments.

5.13 ACCOUNTS. The person appointed by the Bylaws of the Association shall keep or cause to be kept books and records with detailed accounts of the receipts and expenditures affecting the Condominium Regime and its administration and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Condominium Regime. Both the book and vouchers accrediting the entries made thereon shall be available for examination by all the Owners at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the Association.

5.14 AD VALOREM TAXES. The Owners of each and every Unit shall render and declare the same for the purpose of ad valorem taxes with the Tax Assessor of the County wherein the Condominium is situated, or for such other future legally authorized governmental office or authority having jurisdiction over same. Nothing herein shall be construed, however, as giving to any Unit Owner the right of contribution or any right or adjustment against any other Unit Owner on account of

any deviation by the taxing authorities. Each Unit Owner is to pay ad valorem taxes and special assessments as are separately assessed against his Unit.

For this purpose of ad valorem taxation, the interest of the Owner of a "Condominium Unit" and his interest in the "Common Elements," shall be considered a Unit. The value of said Unit shall be equal to the percentage of the value of the entire Condominium, including land and improvements as has been assigned to said Unit in this Condominium Declaration. The total of all of said percentages equals 100% of the value of all of the land and improvements thereon.

ARTICLE VI
MAINTENANCE AND ALTERATIONS

6.01 CONTRACT AUTHORITY. The Board of Directors of the Association may enter into contracts with any person in contracting for the maintenance and repair of the Condominium Project, Association Properties, and any other type properties and may contract for the management of the Condominium Regime, Association Properties, and any other type properties and may delegate to the contractor or manager all the powers and duties of the Association, except such as are specifically required by this Declaration, or by the Bylaws, to have the approval of the Board of Directors or the membership of the Association. The contractor or manager may be authorized to determine the budget, make assessments for common expenses, and collect assessments, as provided by this Declaration and the Bylaws. The Association, through its Board of Directors has entered into a Management Agreement, attached hereto as Exhibit "F" which encompasses the provisions of this Section.

6.02 AGREEMENTS OF OWNERS OF A UNIT. Each Owner of a Unit not committed to Interval Ownership agrees as follows:

- 1) To maintain in good condition and repair his Unit and all interior surfaces within or surrounding his Unit (such as the surfaces of the walls, ceilings, floors) whether or not a part of the Unit or Common Elements and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit.

- 2) Not to make or cause to be made any structural addition, alteration, decoration, repair, replacement or change the Common Elements or to any outside or exterior portion of the building whether within a Unit or part of the Limited Common Elements without the prior written consent of the Board of Directors of the Association.

6.03 AGREEMENTS OF ALL OWNERS. All Owners of Units, agree as follows:

- 1) To allow the Board of Directors, or the agents or employees of any Management Firm or the Association, to enter into any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within the Units, Limited Common Elements or the Common Elements, to determine in case of emergency, circumstances threatening Units, Limited Common Elements or the Common Elements, or to determine compliance with the provisions of this Declaration and the Bylaws.
- 2) To show no signs, advertisements, or notices of any type on the Common Elements, Limited Common Elements, or his Unit, and to erect no exterior antenna or aerials, except as consented to by the Board of Directors of the Association.

6.04 BREACH OF AGREEMENTS. In the event the Owner of a Unit fails to maintain the said Unit and Limited Common Elements, as required herein, or makes any alterations or additions without the required written consent, or otherwise violates or threatens to violate the provisions hereof, the Association shall have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof and in addition there to, the Association shall have the right to levy an assessment against the Owner of a Unit, and the Unit, for such necessary sums to remove any unauthorized addition or alteration and to restore the property to good condition and repair.

Said assessment shall have the same force and effect as all other special assessments. The Association shall have the further right to have its employees or agents, or any contractors appointed by it, enter a Unit at all reasonable times to do such work as it deemed necessary by the Board of Directors of the Association, to enforce compliance with the provisions hereof.

6.05 ASSOCIATION AUTHORITY. The Association shall determine the exterior color scheme of the buildings and all

exteriors, and interior color scheme of the Common Elements, and shall be responsible for the maintenance thereof, and no Owner shall paint an exterior wall, door, window, or any exterior surface, or replace anything thereon or affixed thereto, without the written consent of the Board of Directors of the Association.

6.06 ASSOCIATION RESPONSIBILITY. The Association shall be responsible for the maintenance, repair, and replacement of the Common Elements, including but not limited to all recreation facilities, and all property not required to be maintained, repaired, and/or replaced by the Unit Owners. Notwithstanding the other responsibilities as to his Unit, as is provided in this Declaration and Exhibits attached hereto, the Association, may enter into an Agreement with such firms or companies as it may determine to provide certain services and/or maintenance for and on behalf of the Unit Owners whereby maintenance and service are provided on a regularly scheduled basis for air conditioning maintenance and services as the Association deems advisable and for such period of time and on such basis as it determines. Said Agreements shall be on behalf of all Unit Owners and the assessment due from each Unit Owner for common expenses shall be increased by such sum as the Association deems fair and equitable under the circumstances in relation to the charge for said maintenance or service, subject to the limitations set forth in Paragraph 5.08. Each Unit Owner shall be deemed a party to said Agreement with the same force and effect as though said Unit Owner had executed said Agreements as the Agent for the Unit Owner. The aforesaid assessments shall be deemed to be an assessment under the provisions of Article V of this Declaration.

ARTICLE VII

INSURANCE AND CONDEMNATION

7.01 The association shall purchase and maintain policies of property, liability, flood, Directors/Officers, and other insurance and fidelity bond coverage in accordance with the recommendations of the Association. Property coverage shall cover from the studs out and each owner shall be responsible for coverage walls in as well as personal property and fixtures inside the unit.

7.02 NOTICE OF NO INSURANCE. If the insurance described in Section 7.01 is not maintained, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners. The Association, in

any event, may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

7.03 INSURANCE ADJUSTMENT AND DISBURSEMENT. Any loss covered by the property policy under Section 7.01 shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated by the Association for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lien holders as their interests may appear. Subject to the provisions of this Section, the proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and Units, and Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds after the Common Elements and Units have been completely repaired or restored, or the Condominium Regime is terminated.

7.04 UNIT OWNER'S INSURANCE. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.

7.05 CERTIFICATES AND CANCELLATION NOTICE. An insurer that has issued an insurance policy under this Article VII shall Issue certificates or memoranda of insurance to the Association and, upon request, to any Unit Owner, Mortgagee, or beneficiary under a first lien deed of trust. The insurance may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Unit Owner and each Mortgagee or beneficiary under a first lien deed of trust to whom certificates of insurance have been issued.

7.06 EXCEPTIONS TO REBUILDING. Any portion of the Condominium Project damaged or destroyed shall be repaired or replaced promptly by the Association unless:

- 1) The Condominium Regime is terminated;
- 2) Repair or replacement would be illegal under any state or local health or safety statute or ordinance;
- 3) 80% of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild; or
- 4) The disaster comprises all or more than two-thirds (2/3) of all the Buildings as determined by the Association.

In the event it is determined by the Association that reconstruction shall not take place as provided for in this Section 7.06, and unless otherwise unanimously agreed upon by the Owners, or their mortgagees, as their interest may appear, entitled to it in accordance with Unit's Percentage Interest set forth in this Declaration.

Should it be proper to proceed with the reconstruction, the provisions for such eventuality made in the Bylaws shall be observed, or if there be no such provision the decision of the Association shall govern.

7.07 COSTS IN EXCESS OF INSURANCE PROCEEDS. Where the Insurance indemnity is insufficient to cover the cost of reconstruction and reconstruction is required under the proceeding Section hereof, the building costs in excess of the insurance proceeds shall be paid by all the Owners directly affected by the damage as provided in the Bylaws; however, if there is no valid Bylaw provision, then, in proportion to the Percentage Interest assigned to the respective Unit or Unit Weeks so affected. If any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the Owners benefited thereby, upon proper resolution setting forth the circumstances of the case and the cost of the work.

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

7.08 CONDEMNATION. If less than the entire project is taken by the power of eminent domain, the Condominium Regime shall not terminate, but shall continue. If any partial taking results in the taking of an entire Unit, the Owner thereof shall cease to be a Member of the Association. The Association shall reallocate the voting rights and the undivided interest in the common Elements appertaining to such Unit or Units in accordance with the provisions of the Condominium Act.

ARTICLE VIII
MORTGAGEE'S PROTECTION

- 8.01 NOTICES. A Mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by an Owner-Mortgagor, of any obligation under this Declaration and other documents governing this Condominium Regime, which is not cured within sixty (60) days.
- 8.02 FORECLOSURE EXEMPTION. Any Mortgagee which obtains title to a Unit pursuant to the remedies provided in the mortgage instruments, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure will be exempt from any "right of first refusal" contained in this Declaration or other documents governing this Condominium Regime, if any.
- 8.03 ASSESSMENTS. Any Mortgagee which obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid assessments which accrue prior to the acquisition of title to such Unit by the Mortgagee.
- 8.04 PROHIBITIONS. Unless at least 75% of the first mortgagees (based upon votes equal to the Percentage Interest of the Unit or Unit Week subject to the Mortgage), or Owners (other than Developer) have given their prior written approval in recordable form, the Association shall not be entitled to:
- 1) By act or omission, seek to abandon or terminate the Condominium Regime;
 - 2) Change the Percentage Interest or obligations of any Unit for the purpose of:
 - a) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
 - b) Determining the pro-rata share of ownership of each Unit in the Common Elements;
 - 3) Partition or subdivide any Unit;
 - 4) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project

shall not be deemed a transfer within the meaning of this clause);

- 5) Use hazard insurance proceeds for losses to the Condominium Project (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such property, except as provided by statute in the case of substantial loss to the Units or Common Elements of the Condominium Project (See Article VI).
- 8.05 RECORDS. Mortgagees shall have the right to examine the books and records of the Association.
- 8.06 RESERVE FUNDS. The Association assessments and charges shall include an adequate reserve fund for maintenance, repairs, and replacements.
- 8.07 LIENS. All taxes, assessments, and charges which may become liens prior to the first mortgage under local law shall relate only to individual Units and not to the Condominium Project.
- 8.08 INSURANCE, ETC. PROCEEDS. No provision of the Declaration or other documents governing this Condominium Regime shall give any Owner, or any other party, priority over any rights of Mortgagees of the Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and Common Elements.

ARTICLE IX
AMENDMENT OF DECLARATION

- 9.01 IN GENERAL. Except in cases of amendments that may be executed by Developer under other Sections of this Article IX, and subject to Article IX hereof, this Declaration, including the plats and plans, may be amended only by vote or agreement of Unit Owners to which at least two-thirds (2/3) of the votes of the Association are allocated. No amendment shall change the rights and privileges of the Developer without Developer's approval.
- 9.02 RECORDING. Every amendment to this Declaration must be Recorded.
- 9.03 UNANIMOUS CONSENT. Except to the extent expressly permitted or required by other provisions of this Declaration or the Condominium Act, no amendment to this

Declaration may increase the number of Units, or change the boundaries of any Unit, the Percentage Interest, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners.

- 9.04 PREPARATION AND CERTIFICATION. Amendments to this Declaration to be Recorded by the Association shall be prepared, executed, recorded, and certified by the president and/or secretary of the Association.
- 9.05 AMENDMENTS BY DEVELOPER. Notwithstanding anything in this Declaration to the contrary, Developer may amend this Declaration in order to:
- 1) Correct Exhibits or other errors which may have been made in this Declaration during the period of Developer control of the Association;
 - 2) Change the Percentage Interest assigned to and dimensions of Units owned by Developer so long as such changes do not decrease the Percentage Interest assigned to Units of other Owners; and
 - 3) Conform with the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or similar financial institutions with respect to Condominium documentation.

Each by written instrument to such effect, executed and acknowledged by Developer only, and duly Recorded.

ARTICLE X MISCELLANEOUS PROVISIONS

- 10.01 VENUE. The obligations and undertakings of each of the parties subject to this Declaration shall be performable in the County in which the Property is located.
- 10.02 LEGAL CONSTRUCTION. If any term provision, covenant, or condition of this Declaration, the Articles of Incorporation, the Bylaws, or the Management Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 10.03 CONFLICTS. In the event any conflict between the Condominium Act, this Declaration, the Bylaws, the

Management Agreement, or the Rules and Regulations, then the provisions of those documents shall prevail in the order in which those documents are listed in this Section.

- 10.04 TEXAS LAW. This Declaration shall be governed by and construed in accordance with the laws of the State of Texas.
- 10.05 PARTIES BOUND. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of Developer, and all future Owners by their acceptance of their deeds.
- 10.06 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions hereof, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party, which fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.
- 10.07 ENFORCEMENT. The terms and provisions of this Declaration, the Bylaws, and the Condominium Act may be enforced in law or equity by the Association, or any Owner. Failure to comply therewith shall entitle the Association or any Unit Owner to recover damages or injunctive relief, or both. Any failure to so enforce this Declaration, from time to time, shall not be deemed a waiver of such breach or failure to adhere to the provisions hereof.
- 10.08 NOTICES. Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners either personally or by mail, addressed to such Unit Owners at their address on file with the Association from time to time. Proof of such mailing or personal delivery by the Association or any Management Firm shall be given by the Affidavit of the person mailing or personally delivering said notices. Notices to the Association shall be delivered by mail to the Secretary of the Association, or the President of the Association. The change of the mailing address of any party as specified herein shall not require an amendment to this Declaration.

Notices to the Developer shall be delivered by mail at:
Sunward Developers, Inc., 7600 Seawall Boulevard, Galveston,
Texas 77551.

Notices to the Management Firm shall be delivered by mail at:
Sun Resort Management, Inc., 7600 Seawall Boulevard,
Galveston, Texas 77551.

All notices shall be deemed and considered sent when mailed.
Any party may change his or its mailing address by written
Notice, duly receipted for. Notices required to be given to
the personal representatives of a deceased Owner or devisee,
when there is no personal representative, may be delivered
either personally or by mail to such party at his or its
address appearing in the records of the Court wherein the
Estate of such deceased Owner is being administered. The
change of the mailing address of any party, as specified
herein, shall not require an Amendment to the Declaration.

10.09 GENDER AND NUMBER. Wherever the context shall so
require, all words herein in any gender shall be deemed
to include the masculine, feminine, or neuter gender.
All singular words shall include the plural, all plural
words shall include the singular.

10.10 HEADINGS. The headings used in this Declaration
are used for administrative purposes only and do not
constitute substantive matter to be considered in
construing the terms hereof.

10.11 THE CONDOMINIUM ACT. The Property rights and
obligations provided for in the Condominium Act are
included herein, however, the provisions of the
Condominium Act shall take precedent over any provision
herein that may be in conflict therewith.

EXECUTED by Developer on the day and year first above
written.

Sunward Developers, Inc.

ATTEST:

By:

Secretary

Theodore Weiswasser, President

ATTEST:

Dwelling Development, Inc.

Secretary

By:

Willis M. Lucas, President

ACKNOWLEDGEMENT

THE STATE OF TEXAS *
*
COUNTY OF GALVESTON*

BEFORE ME, the undersigned authority, on this day personally appeared Theodore Weiswasser, President of Sunward Developers, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15th day of April, 1983.

Notary Public in Galveston County
For the State of Texas
(CATHY REID)
My Commission Expires: 4/9/85

THE STATE OF TEXAS *
*
COUNTY OF GALVESTON*

BEFORE ME, the undersigned authority, on this day personally appeared Willis M. Lucas, President of Dwelling Development, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 15th day of April, 1983.

Notary Public in Galveston County
For the State of Texas
(CATHY REID)
My Commission Expires: 4/9/85

ACCEPTANCE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Captain's Cove Resort Association, a Texas non-profit corporation, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations, and burdens imposed upon it by the provisions of the Declaration of Condominium and Exhibits attached hereto.

IN WITNESS WHEREOF, the above-described Corporation, a Texas non-profit corporation, has caused these presents to be signed in its name by its President, and its Corporate Seal affixed, attested by its Secretary, this 15th day of April, 1983.

Captain's Cove Resort Association
By: _____

ATTEST:

Secretary

VAN A. BARNETT

REGISTERED PROFESSIONAL CIVIL ENGINEER
&
REGISTERED PUBLIC LAND SURVEYOR

ESTIMATES
LAND SURVEYING
PUBLIC IMPROVEMENTS
CONCRETE DESIGN
TIMBER STRUCTURES
LAND PLANNING
SUBDIVISIONS

EXHIBIT "A"
LAND DESCRIPTION
March 15, 1983

3818 AVENUE N1/2
Galveston, Texas
PHONE 762-3944

REVISED DESCRIPTION FOR WILLIS LUCAS

Survey of part of Lot 140 and East ½ of Lot 151, section #1, Trimble & Lindsey Subdivision, City of Galveston, Galveston County, Texas, described as follows:- Beginning at point in South Line of Stewart Road which is 235 feet East of West Line of said Lot 151; thence S25°E, parallel with West Line of said Lot 151, 135 feet to corner; thence S65°W, parallel with said South Line, 70 feet to corner in West Line of East ½ of said Lot 151; thence S25°E, along said West Line, 163.39 feet to corner in Northerly Line of Seawall Boulevard; thence N55°55'E, along said Northerly Line across Lots 151 and 140, 501.28 feet to corner in East Line of said Lot 140; thence N25°W, along said East Line, 107.9 feet to corner; thence S55°55'W 160 feet to corner; thence N25°W, parallel with said East Line, 152.80 feet to corner in said South Line of Stewart Road; thence South-westerly, alongside South Line which is a curve to the right with a 1482.72 foot radius, 219.39 feet to Point of Tangency; thence S65°W, along said South Line, 48.03 feet to Place of Beginning.

Van A. Barnett, Reg. P.S.

EXHIBIT "B"

PLAT OF LAND, BUILDING LETTERS, LOCATION OF

BUILDING(S), COMMON ELEMENTS, AND

LIMITED COMMON ELEMENTS

(See the drawing(s) hereof, submitted with this Declaration to the County Clerk of Galveston County, Texas, which drawing(s) are incorporated herein by reference).

EXHIBIT C"

PLAT OF EACH FLOOR OF EACH BUILDING
SHOWING THE LETTER OF THE BUILDING,
THE NUMBER OF THE FLOOR; THE GENERAL DESCRIPTION
AND NUMBER OF EACH UNIT, ITS AREA, LOCATION AND
OTHER IDENTIFICATION DATA; THE GENERAL DESCRIPTION,
LOCATION, AND IDENTIFICATION OF LIMITED COMMON ELEMENTS

(See the drawing(s) hereof, submitted with this Declaration to the County Clerk of Galveston County, Texas, which drawing(s) are incorporate herein by reference).

EXHIBIT "D"

UNIT PERCENTAGE INTEREST

Each Unit Owner within the Condominium Project shall have a 1.9608% interest in and to the Common Elements and Common Surplus and shall be responsible for said 1.9608% of the Common Expense Assessments by the Association.

EXHIBIT "G"
ARTICLES OF INCORPORATION OF
CAPTAIN'S COVE RESORT ASSOCIATION

We, the undersigned natural persons of the age of eighteen (18) years or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-profit Corporation Act, do hereby adopt the following Articles of Incorporation for such Corporation:

ARTICLE I.

The name of the Corporation is Captain's Cove Resort Association.

ARTICLE II.

The Corporation is a non-profit corporation.

ARTICLE III.

The period of its duration is perpetual.

ARTICLE IV.

The purposes for which this Corporation is formed are:

- 1) The primary purpose is to operate and provide for the acquisition, construction, management, maintenance, and care of the corporate property, referred to in the Condominium Declaration for Captain's Cove Resort as both general and limited common elements;
- 2) The general purposes and powers are to have and exercise all rights and powers conferred on non-profit corporations under the laws of Texas, or which may hereafter be conferred, including the power to contract, rent, buy, or sell personal or real property;
- 3) Notwithstanding any of the above statements of purposes and powers, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this Corporation.

This Corporation is organized pursuant to the Texas Non-profit Corporation Act and does not contemplate pecuniary gain or profit to the members thereof and is organized for non-profit purposes.

ARTICLE V.

The street address of the initial registered office of the Corporation is 7600 Seawall Boulevard, Galveston, Texas 77551, and the name of its initial registered agent at such address is Charlene Kearney.

ARTICLE VI.

The number of directors constituting the initial board of directors of the Corporation is three (3), and the names and addresses of the persons who are to serve as the initial directors are:

Willis M. Lucas
7600 Seawall Boulevard
Galveston, Texas 77551

Theodore Weiswasser
7600 Seawall Boulevard
Galveston, Texas 77551

Charlene Kearney
7600 Seawall Boulevard
Galveston, Texas 77551

ARTICLE VII.

The name and street address of each incorporator are:

W. Daniel Vaughn
802 Rosenberg
Galveston, Texas 77550

John J. White
802 Rosenberg
Galveston, Texas 77550

Nancy R. Kline
802 Rosenberg
Galveston, Texas 77550

IN WITNESS WHEREOF, we have hereunto set our hands, this _____ day of _____, 1983.

W. Daniel Vaughn

John J. White

Nancy R. Kline

THE STATE OF TEXAS *
*
COUNTY OF GALVESTON*

I, a Notary Public, do hereby certify that on this _____ day of _____, 1983, personally appeared W. Daniel Vaughn, John J. White, and Nancy R. Kline, who being by me first duly sworn, declared that they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are true.

Notary Public in Galveston County,
For the State of Texas

My Commission Expires: _____