

BYLAWS OF  
EGRET BAY VILLAS CONDOMINIUM ASSOCIATION  
ARTICLE I

Members – (Unit Owners)

Section 1.1 Eligibility. The members (The “Members”) of Egret Bay Villas Condominium Association, a Texas nonprofit corporation (The “Association”), shall consist of the owners of Webster, Texas. These and other terms are used in these Bylaws as they are defined in the Declaration of Condominium for Egret Bay Villas (The “Declaration”), which Declaration is recorded in the Office of the Country Clerk of Harris County, Texas. The term “Member” or “Members” as used in these Bylaws means and shall refer to “Unit Owner” or “Unit Owners”, as the case may be, as defined in the Declaration.

Section 1.2 Succession. The membership of each Member shall terminate when he ceases to be a Unit Owner, and upon the sale, transfer for other disposition of his ownership interest in the Property, his membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

Section 1.3 Meeting of Members.

- (a) First Meeting of the Members. The first annual meeting of the Members shall be held at a time provided in Article X of the Articles of Incorporation of the Association (The “Articles”).
- (b) Annual Meeting. Thereafter, an annual meeting of the Members of the Association shall be held in the Buildings or at such other place as may be designated by the Board at 8:00 o’clock p.m. on the third Tuesday in January of each calendar year (or the first business day thereafter if such day is a governmental or religious holiday). At the discretion of the Board, the annual meeting of the Members of the Association may be held at such other reasonable time (not more than sixty (60) days prior to or subsequent to the aforesaid date) as may be designated by written notice of the Board delivered to the Members not less than ten (10) not more than sixty (60) days prior to the date fixed for said meeting.
- (c) At the annual meeting, the Board shall present a certified audit of the Common Expense Fund, itemizing receipts and disbursements for the preceding calendar year, the allocation thereof to each Unit Owner and the estimated Common Expense Charges for the coming calendar year. Within thirty (30) days after the annual meeting, the statements and estimates presented at the annual meeting by the Board shall be delivered to all Unit Owners.
- (d) For the purpose of determining the Members entitled to notice of a meeting and to vote at any meeting, the membership of the Association shall be determined at the close of business on the twenty-fifth (25<sup>th</sup>) day preceding such meeting.

Section 1.4 Special Meeting. Special Meeting of the Members may be called by the President or by a majority of the Directors of the Board, or by Members having at least two-fifths (2/5) of the votes entitled to vote at such meeting. Said special meetings shall be called by delivering written notice to all Members no less than ten (10), nor more than thirty (30) days prior to the date of the said meeting, stating the date, time and place of said special meeting and the matters to be considered.

Section 1.5 Delivery of Notice of Meeting. Notices of meetings may be delivered either personally or by mail to a Member at the address given to the Board by said Member for such purpose, or to the Member's Unit, if no address for such purpose has been given to the board.

Section 1.6 Voting. The aggregate number of votes for all Members shall be one hundred (100), and shall be divided among the respective Member, in accordance with their respective percentage Ownership Interest in the Common Elements as set forth in the Declaration. If more than one (1) person owns a Unit, the voting rights relating to such Unit shall not be divided but shall be exercised as if the Unit Owner consisted of only one Person in accordance with the proxy or other designation made by the Persons constituting such Unit Owner. The Declarant may exercise the voting rights with respect to all Units owned by it.

Section 1.7 Quorum. A quorum of Members for any meeting shall be constituted by Members represented in person or by proxy and holding a majority of the vote entitled to be cast at such meeting.

## ARTICLE II

### Board of Directors

Section 2.1 Member, Election and Term of Office. The Board of Directors of the Association (the "Board") shall consist of five (5) Members (the "Directors"). Directors shall be elected at the regular annual meeting of the Association by vote of (the "Initial Board") shall be appointed by the Declarant. Those candidates for election as Director receiving the greatest portion of votes cast either in person or by proxy at the meeting shall be elected. At the first annual meeting of the Association, three (3) Directors shall be elected for a term of two (2) years and two (2) Directors shall be elected for a term of one (1) year. Thereafter, at the annual meeting of the Association, the Members shall elect either three (3) or two (2) Directors, as the case may be each to serve for a term of two years, in order to fill the position of the directors whose terms have expired at the time of the annual meeting. The candidate receiving the highest number of votes shall be deemed elected. All votes shall be cast by written ballot, and may be cast either in person or by proxy. Members shall not vote cumulatively for the election of Directors.

Section 2.2 Qualification. Except for the Initial Board, each Director shall be a Unit Owner or the spouse of a Unit Owner (or, if a Unit Owner is a corporation, a trust or partnership, a Director may be an officer, partner, or trustee or employee of such Unit Owner or beneficiary). If a Director shall cease to meet such qualifications during his term, he shall thereupon cease to be a Director and his place on the Board shall be deemed vacant.

Section 2.3 Vacancies. Any vacancy occurring in the Board shall be filled by a majority vote of the remaining Directors thereof, except that a vacant position on the Board which was last filled by one of the Initial Board may be filled by a person appointed by the Declarant. Any Director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the Director whom he succeeds.

Section 2.4 Meetings. A regular annual meeting of the Board shall be held within ten (10) days following the regular annual meeting of the Association. Special meetings of the Board shall be held upon a call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each Director delivered personally or by mail or telegram. Any Director may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action proposed to be taken by the Board without a meeting. A Director's attendance at a meeting shall constitute his waiver of notice of said meeting.

Section 2.5 Removal. Any Director may be removed from office for cause by the vote of Members holding two-thirds (2/3) of the total undivided ownership of the Common Elements.

Section 2.6 Compensation. Directors shall receive no compensation for their services as Directors, unless expressly provided for in resolutions duly adopted by a majority of the Members.

Section 2.7 Quorum. Three (3) directors shall constitute a quorum.

Section 2.8 Powers and Duties. The Boards shall have the following powers and duties.

- (a) to elect and remove the officer of the Association as hereinafter provided;
- (b) to administer the affairs of the Association and the Property;
- (c) to engage the services of an agent (the "Managing Agent") to maintain, repair, replace, administer and operate the Property or any part thereof for all of the Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve; provided, however, that the Initial Board shall have authority to ratify and approve a management agreement between the Declarant, on behalf of the Association and a management corporation, which may be a corporation related to the Declarant, to act as Managing Agent for the Property for a term terminating one (1) year after members who are purchasers from Declarant assume control of the Property, at an annual rate of Twenty Five Thousand Dollars (\$25,000.00), which ratification and approval shall not be subject to the provisions of article IV, Section 4.6 hereof;
- (d) to formulate for the administration, management, and operation of the Property and the Common Elements thereof;
- (e) to adopt rules and regulations, with written notice thereof to all Unit Owners, governing the administration, management, operation and use of the Property and the Common Elements, and to amend such rules and regulations from time to time;
- (f) to provide for the maintenance, repair and replacement of the Common Elements and payments therefore, and to approve payment vouchers or delegate such approval to the officers or the manger or managing Agent;
- (g) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair , replacement, administration, management and operation of the Property and the Common

Elements, and to delegate any such powers to the Managing Agent (and any such employee or other personnel who may be the employees of a Managing Agent);

- (h) to appoint committees of the Board and to delegate to such committee the Board's authority to carry out certain duties of the Board;
- (i) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Unit Owners their respective shares of such estimated expenses as herein provided;
- (j) to enter into any lease or purchase agreement for the lease or purchase of premises suitable for use as custodian apartments, upon such terms as the Board may approve;
- (k) unless otherwise provided herein or in the Declaration, to comply with instruction of a majority of the Members (as said majority is defined in Subsection 1.1 (m) of the Declaration, as expressed in the resolution duly adopted at any annual or special meeting of the Association;
- (l) to exercise all other powers and duties of the Association of Co-Owners or Unit Owners as a group referred to in the Act and all powers and duties of a Board of Directors referred to in the Declaration and Bylaws.

Section 2.9 Non-Delegation. Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Unit Owners.

### ARTICLE III

#### Officers

Section 3.1 Designation. At each regular annual meeting of the Board, the Directors present at said meeting shall elect the following officers of the Association by a majority vote;

- (a) a President, who shall be elected from the Board of Directors, shall preside of the meeting of the Board and the Association, and shall be the chief executive officer of the Association.
- (b) a Secretary, who shall keep the minutes of all meetings of the Board and the Association and shall, in general, preform all duties incident to the office of Secretary, and who may be a representative of the Managing Agent;
- (c) a Treasurer, who shall be elected from the Board of Directors and shall be responsible for financial records and books of account and the manner in which such records and books are kept and reported;
- (d) such additional officers that the Board shall see fit to elect; however, if the Board determines that Vice President(s) is (are) necessary then the Vice President and the First Vice President (in the event there may be more than one) shall be elected from the Board of Directors.

Section 3.2 Powers. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit. Such powers shall include the following:

- (a) President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the Members and all meetings of the Board of Directors. He shall sign, with the Secretary or Assistant Secretary, certificates of membership, and deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and the execution thereof shall be expressly delegated by the Board to some other officer or agent of the Association or shall be required by law to be otherwise signed or executed. In general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time. The President shall not have the authority to bind the Association to any employment agreement on behalf of the Association unless such employment agreement be expressly approved and authorized in advance by resolution of the Board. In the event that any such employment agreement provides for the employment of any person who at the time of such employment or at any time during the period of such employment is an officer of the Association, then no provision of such contract purporting to amplify the authority of such officer beyond the authority set forth in these Bylaws shall be voided or effective unless these bylaws are amended in a manner consistent with such employment agreement, and the mere signing of such employment agreement on behalf of the Association and its approval at a meeting of the Board (and/or the Association ) shall not constitute an amendment of these Bylaws, in the event that any such employment agreement (whether or not these Bylaws be amended incident thereto) limits or qualifies the authority of any such officer in a manner inconsistent with these Bylaws or imposes on such officer duties not provided for under these Bylaws, then the provision of such authority and imposing such duties shall be valid and effective notwithstanding any inconsistency between the provision of the Bylaws.
- (b) Secretary. The Secretary shall (1) keep the minutes of the meeting of the Association and Board in one or more books provide for that purpose; (2) see that all notices are duly given in accordance with the provision of these Bylaws or as required by the Association and see that the seal of the Association is affixed to all certificates of membership prior to the issuance thereof and to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these Bylaws; (3) keep a register of the post office address of each member; (4) sign with the President certificates of membership, the issue of which shall have been authorized by Resolution of the Board; (5) have general charge of books of the Association; (6) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or the Board.

- (c) Treasurer. The Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety of sureties as the Board shall determine. He shall have charge and custody of and be responsible for all funds and securities of the Association, receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected by the Board. In general he shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board
  
- (d) Additional Officers. Additional officers may be appointed by the Board and shall hold their offices for such terms and shall have such authority and exercise such powers and perform such duties as shall be determined from time to time by the Board by Resolution not inconsistent with these Bylaws, such additional officer may include the following:
  - (1) Vice President(s). In the absence of the President or in the event of his inability or refusal to act the Vice President (or in the event there be more than one Vice President, the Vice Presidents, in order) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Additional Vice Presidents may be appointed by the Board as they see fit. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board.
  - (2) Assistant Secretary and Assistant Treasurer. Such Assistant Secretaries as authorized by the Board may sign, with the President, certificates of membership, the issue of which shall have been authorized by a Resolution of the Board. Such Assistant Treasurers as authorized by the Board shall respectively give bonds for the faithful discharge of their duties in such sum and with such sureties as the President or Board shall determine. The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or the Secretary, respectively, or by the President or the Board.

Section 3.3 Term of Office. Each Officer shall hold office for the term of one year and until his successor shall have been appointed or elected and qualified.

Section 3.4 Vacancies. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer she succeeds. Any officer may be removed for cause at any time by vote of two-thirds (2/3) of the total membership of the Board.

Section 3.5 Compensation. The officers shall receive no compensation for the services unless expressly provided for in a resolution duly adopted by a majority of the Members.

## ARTICLE IV

### Assessments

Section 4.1 Annual Budget. The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association. Such budget shall take into account the estimated common

expenses and cash requirements for the year, including but not limited to salaries, wages, payroll taxes, legal and accounting fees, working capital fund, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power and all other common expenses. To the extent that the assessments and other cash income collected from the Unit Owners during the preceding year shall be more or less than the expenditure for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The annual budget shall also take into account the estimated net available cash income for the year from the lease, operation or use of the common elements. The annual budget shall provide for a reserve for contingencies for the year and a reserve for the replacements; in reasonable amounts as determined by the Board.

Section 4.2 Assessments. The estimated annual budget for each fiscal year shall be approved by the Board, and such copies thereof shall be finished by the Board to each Member, not later than thirty (30) days prior to the beginning of such year. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner shall pay, as his respective monthly assessments for the common expenses, one-twelfth (1/12) of his proportionate share of the common expenses for such year as shown by the annual budget. Such proportionated share for each Unit Owner shall be in the Common elements, as set forth in the Declaration. In the event that the Board shall not approved an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined. Each Unit Owner shall pay his monthly assessment on or before the first day of each month to the Managing Agent or as may be otherwise directed by the Board. No Unit Owners shall be relieved of his obligation to pay this assessment by abandoning or not using his unit, the Common Elements or the Limited Common Elements. The failure or delay of the Board to prepare any annual budget or to deliver copies of such budgets to each Unit Owner shall not constitute a waiver or release in any manner of any Unit Owner's obligation to pay Common Expense Charges whenever the same shall be determined, and in the event of any delay or failure to establish any annual budget each Unit Owner shall continue to pay the Common Expense Charge, monthly, at the rate established for the previous period until a new annual budget is established.

Section 4.3 Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the Initial Board. If such first fiscal year shall be less than a full year, then the monthly assessment for each Unit Owner shall be proportionate to the number of months and days in such period covered by the budget. If a Unit Owner acquires ownership of his Unit on the first day of the month; he shall pay the monthly assessment for the Unit beginning that month. If a Unit Owner acquires ownership on any other day of the month he shall pay the monthly assessment for the Unit beginning the following month. As between themselves, sellers and purchasers of Units may prorate liability for the payment of monthly assessments.

Section 4.4 Annual Report. Within ninety (90) days after the end of each fiscal year covered by an annual budget, or is soon thereafter as shall be practicable, the Board shall cause to be furnished to each Member a statement for such year so ended, showing the receipts and expenditures and such other information as the Boards may deem desirable.

Section 4.5 Supplemental and Special Assessments.

- (a) In the event that during the course of any year, it shall appear to the Board that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated common expenses for the remainder of such year, copies of which

supplemental budget shall be furnished to each Unit Owner, and thereupon a supplemental assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget.

- (b) Special Assessments. In the event of casualty losses, condemnation losses or other events (including non-payment of Common Expense Charges by some Unit Owner which require additional funds be supplied for preservation and operation of the Property, the Board shall have the authority at any time or from time to time to levy such a special assessment (the "Special Assessments") as it shall deem necessary for the purpose. Special Assessments shall not be levied, however, without prior approval of Members having at least a majority of the votes in the Association, unless a greater number of votes is required by law.

Section 4.6 Expenditures. Except for the management agreement described in Article II, Section 2.5(c) hereof and expenditures and contracts specifically authorized by the Declaration and Bylaws, the Boards shall not approve any expenditures in excess of Twenty-Five Thousand Dollars (\$25,000.00), unless required for emergency repair, protection or operation of the Common Elements or Limited Common Elements, nor enter any contract for more than one (1) year without prior approval of the Members holding two-thirds (2/3) of the total undivided ownership of the Common Elements.

Section 4.7 Lien. It shall be the duty of every Unit Owner to pay his proportionate share of the common expenses, as provided in the Declaration, and as assessed in the manner approved.

If any Unit Owner shall fail or refuse to make any such payment of any assessment when due, the amount thereof together with interest thereon at the maximum lawful rate of interest per annum after said assessment becomes due and payable, shall constitute a lien, as provided in the Declaration, enforceable by the Board, on the interest of such Unit Owner in the Property; provided; however, that such lien shall be subordinate to the lien of a prior recorded first Mortgage on the interest of such Unit Owner, except for the amount of the proportionate share of Common Expense Charges and Special Assessments which are due and payable from and after the date on which such Mortgage owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as security ) or files suit to foreclosure its mortgage or causes a receiver to be appointed to take possession of the Unit. The provision of this section shall not be amended, changed, modified or rescinded in any way without prior written consent of all holders of recorded Mortgages against Units.

The Association or its successors and assigns, or the Board or its agents, shall have the right to maintain a suit to foreclose any such lien for unpaid assessments, and there shall be added to the amount due the cost of said suit and other fees and expenses, together with interest and reasonable attorneys' fee to be fixed by the Court. The Board of the Association shall have the authority to exercise and enforce any and all rights and remedies provided for in the Act, the Declaration, the Articles or these Bylaws, or as rare otherwise available at law or in equity, of the recollection of all unpaid assessments.

Section 4.8 Records and Statement of Account. The Board shall cause to be kept the records required by the Act and detailed and accurate records of the receipts and expenditures affecting the Common Elements and Limited Common Elements, specifying and itemizing the expenses incurred. Payment vouchers may be approved in such manner as the Board may determine.

The Board shall, upon receipt of then (10) days' written notice to it or the Association, and upon payment of a reasonable fee, furnish to any Unit Owner a statement of his account setting forth the amount of any unpaid assessment or other charges due and owing from such Unit Owner.



Section 4.9 Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unity. When less than all Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason for such lien.

Section 4.10 Holding of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such assessments as may be levied hereunder and under the Declaration against less than all of the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in the Declaration.

## ARTICLE V

### Use and Occupancy Restrictions

Section 5.1 General. Each Unit Owner shall comply with the use and occupancy restriction set for the in the Declaration. No unlawful or noxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgement of the Board cause unreasonable noises or disturbances to others.

Each Unit Owner shall maintain his Unit in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in this unit which may increase the cost or cause the cancellation of insurance on other Units or on the Common Elements. No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside his Unit, or which may be visible from the outside of his Unit (other than draperies, curtains, or shades of a customary nature and appearance, subject to the rules and regulations of the Board), or paint or decorate or adorn the outside of his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board or the written permission of the Board or the written permission of the Managing Agent, acting in accord with the Board's direction.

The foregoing restrictions as to use and occupancy shall not be construed to prohibit a Unit Owner from placing and maintaining outdoor furniture and decorative foliage of a customary nature and appearance on a balcony or on a terrace.

Section 5.2 Animals. No animals shall be raised, bred or kept in any Unit except for dogs, household cats and small birds owned as household pets by Unit Owner, provided that (i) said pets are not kept for any commercial purpose. (ii) said pets shall be kept in strict accordance with the administrative rules and regulations relating to household pets from time to time adopted or approved by the Board, and (iii) said pets shall not, in the judgment of the Board, constitute a nuisance to others.

Section 5.3 Trash. Trash, garbage and other waste shall be kept only in sanitary containers, and shall be disposed of in a clean and sanitary manner as prescribed from time to time in rules and regulations of the Board.

Section 5.4 Use of Declarant. Declarant may use the Property as provided in the Declaration.

## ARTICLE VI

## Contractual Powers

No contract or other transaction between the Association and one or more of its Directors or between the Association and any corporation, firm or association in which one or more of the Directors of the Association are directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorized or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exist:

- (a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or
- (b) the contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Common or interested Directors may be counted in determining the present of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

## ARTICLE VII

### Amendments

Provided that (i) all holders of record of liens on Units have been notified by certified mail of such change, modification or rescission and an affidavit by the secretary of the Association certifying to such mailing is made a part of such instrument and (ii) each institutional holder of any first lien deed of trust of record on any Unit has approved of such change, modification or rescission, the provision of these Bylaws may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification or rescission and signed and acknowledged by Unit Owners owning not less than eighty percent (80%) of the total undivided ownership of the Common Elements. Such amendments shall be maintained in the corporate records of the Association.

## ARTICLE VIII

### Indemnification

Section 8.1 General. The Association shall indemnify and hold harmless each of its Directors, officers, members of any committee appointed pursuant to these Bylaws, the Board, and Declarant, against all contractual and other liabilities to others arising out of contracts made by other acts of such Directors, Board, officers, committee members or Declarant, unless any such contract or act shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all cost and expenses (including, but not limited to, counsel fees, amounts of judgements paid and amounts paid in settlements) reasonably incurred in connection with the defense of any claim, action, suite or proceeding, whether civil, criminal, administrative or other, in which any such Director, officer, Board, committee member or Declarant may be involved by virtue of such persons being or having been such Director, office, Board or Committee member, or Declarant; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such personal shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such Director, officer Board,

committee or Declarant, or (b) any matter settled or compromised, unless in the opinion of independent counsel or compromised, unless it the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance hos his duties as such Director, officer, Board committee member or Declarant.

Section 8.2 Success on Merits. To the extent that the Declarant or a member of the Board or an officer of the Association or a member of any committee appointed pursuant to the Bylaws for the Association has been successful on the merits otherwise in defense of any action. Suit or proceeding referred to in Section 8.1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fee) actually and reasonably incurred by him in connection therewith.

Section 8.3 Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

Section 8.4 Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Articles; provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of the Directors, Board, officers, members of such committee, or Declarant or out of the aforesaid indemnity in favor of the Directors, Board, officer, members of such committees, or Declarant, shall be limited to such proportion of the total liability hereunder as said Unit Owner's Percentage Ownership Interest bears to the total percentage interest of all Unit Owners in the Common Elements. Every agreement made by the Directors, Board, officers, members of such committees, or Declarant or by the Managing Agent on behalf of the Association shall provide that the Directors, Board, Officer, members of such committees. Declarant or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his Percentage Ownership Interest bears to the total percentage interest of all Unit Owners in the Common Elements. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of member of the Association or disinterested members of the Board or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to a person or entity who has ceased to be a Declarant or a Director, officer, or a member of such committee, and shall insure to the benefits of the heirs, executors, administrators, successors and assigns of such person or entity.

## ARTICLE IX

### Definition of Terms

The terms used in these Bylaws, to the extent they are defined in the Declaration, shall have the same definition as set forth in the Declaration as the same may be amended from time to time. In the event of any conflict between the terms and provision of these Bylaws and the Declaration, the provision of the Declaration shall control. These Bylaws shall not be amended or altered in any manner to make these Bylaws inconsistent with the Declaration.

## DECLARATION OF CONDOMINIUM

FOR

EGRET BAY VILLAS

THIS DECLARATION, is made and entered into by Egret Bay Villas Limited, a Texas Limited partnership hereinafter referred to as “Declarant”.

WITNESSETH;

WHEREAS, Declarant is the owner of certain real property in the Country of Harris, State of Texas, more particularly described in Exhibit “A-J” attached hereto and by this reference incorporated herein for all purposes;

WHEREAS, Declarant desires by recording this Declaration to establish a condominium regime known as “Egret Bay Villas” under the provisions of Article 1301 (a) of the Revised Civil Statutes of Texas and intends and does hereby submit said real property together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto to a condominium regime established in accordance with said statutes and

WHEREAS, Declarant further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property, as hereinafter defined, or any part thereof, and intends that all future owners, occupants, mortgages, and any other persons hereafter acquiring any interest in said Property shall hold said Property and certain mutually beneficial restrictions and obligations and liens with respect to the proper use, conduct and maintenance thereof, hereinafter set forth, all of which rights, assessments, privileges, restrictions, obligations and liens are declared to be in furtherance of a plan to promote and protect the cooperative aspects of resident on said Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said Property;

Now, THEREFORE, Declarant, as the owner of real estate Hereinbefore described, and for the purposes above set forth, declares as follows:

### ARTICLE I

#### DEFINITIONS AND CONVEYANCE PROVISIONS

Section 1.1 Definitions. As used herein, unless the context otherwise requires:

- (a) “Act” means Article 1301 (a) of the Revised Civil Statutes of Texas.
- (b) “Association” means Egret Bay Villas Condominium Association, a Texas non-profit corporation. It is intended that the term “Association” as used in this Declaration shall have the same meaning as Council of Co-Owners in the Act.
- (c) “Board” means the Board of Directors of the Association.

- (d) "Building" shall mean the buildings which may be located on the Parcel and forming part of the Property and containing Units. The Buildings are marked alphabetically in Exhibit C hereto attached.
- (e) "Bylaws" means the Bylaws of the Association as amended from time to time. The initial Bylaws of the Association are hereto attached as Exhibit D.
- (f) "Common Elements" means all of the Property except for the Units, and without limiting the generality of the foregoing shall include those items defined as "general common elements" in the Act, including the following:
- (1) The Parcel;
  - (2) All foundations, bearing walls and columns, roofs, stairways, and entrances and exits or communication ways;
  - (3) All yards and gardens, except as otherwise herein provided or stipulated;
  - (4) All premises for the lodging of janitors or persons in charge of the Buildings, except as otherwise herein provided or stipulated;
  - (5) All Compartments or installations of contract services such as power, light, gas and pumps, swimming pools and the like;
  - (6) All devices or installations existing for common use;
  - (7) All other elements of the Buildings desirably or rationally of common use or necessary to the existence, upkeep and safety of the condominium regime established by this Declaration.
- (g) "Common Expenses" means and includes:
- (1) All sums lawfully assessed against the Common Elements by the Managing Agent or Board;
  - (2) All expenses of administration and management, maintenance, operation, repair or replacement of the additions to the Common elements;
  - (3) Expenses agree upon as common expenses of the additions to the Common Elements;
  - (4) Expenses declared to be common expenses by this Declaration or the Bylaws.
- (h) "Council of Co-Owners: means all of the Unit Owners which Council of Co-Owners has been incorporated as the Association.

- (i) "Declarant" means Egret Bay Villas Limited, a Texas Limited Partnership, and its successors and assigns, provided such successors or assigned are designated in writing by Declarant as a successor or assign of the rights of Declarant set forth herein.
- (j) "Declaration" means this instrument, by which the Property is submitted to the provision of the Act, as hereinafter provided, and such Declaration is amended from time to time.
- (k) "Family Group" means a group consisting of all Occupants residing in a unit or more than one Unit used together.
- (l) "Limited Common Elements" means all Common Elements serving exclusively a single Unit or none or more adjoining Units as an appurtenance thereto, the enjoyment, benefits or use of either in his Declaration or by the Board. Limited Common Elements shall include, but shall not be limited to such portions of the perimeter walls, floors and ceilings, floors, vestibules, windows and entryways, and all associated fixtures and structures therein, lie outside the Unit boundaries, but which serve only such unit or Units.
- (m) "Majority" or "Majority of Unit Owners" means the owners of more than fifty percent (50%) of the undivided ownership of the Common Elements. Any specific percentage of Unit Owners means that percentage of Unit Owners who in the aggregate own such specified percentage of the entire undivided ownership of the Common Elements.
- (n) "Mortgage" means a mortgage or deed of trust covering a Unit and the undivided interest in the Common elements appurtenant thereto.
- (o) "Mortgagee" means a beneficiary under a Mortgage.
- (p) "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.
- (q) "Parcel" means any parcel or tract of real estate, described in this Declaration which is submitted by Declarant to the provision of the Act. Parcel shall include the real property described in Exhibit A-1 hereto and at the sole determination of Declarant and as may be added as proved in Section 10.1 hereof, may include the real property described in Exhibit A-2 and in Exhibit A-3 hereof when such real property is submitted to the provision of the Act.
- (r) "Percentage of Ownership Interest" means the undivided percentage of the Common Elements owned by a Person.
- (s) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- (t) "Plat" means the plan for the Property and shall refer to Exhibit C attached hereto and by this reference incorporated herein for all purposes and if Declarant at its sole discretion submits the real property described in Exhibit A-2 or A-3 to the provision of the Act. "Plat" shall also refer to the plan covering said addition to the property submitted by Declarant. The Plat

depicts the Parcel, the location of the Buildings on the Parcel, with each Building denoted by a letter, and the location of each Unit which may be included in the Property.

- (u) "Property" means all the land, property and space comprising the Parcel submitted to the provision of the Act by Declarant, and all improvements and structures erected, constructed or contained therein or thereon, including the buildings, and all easements, rights and appurtenances belonging thereto and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit for enjoyment of the Unit Owners.
- (v) "Record" or "Recording" refers to the record or recording the in the Office of the Country Clerk of Harris Country, Texas.
- (w) "Unit" means an enclosed space consisting of one or more rooms occupying all or part of a floor or floors in the Building which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Plat, and the boundaries of each Unit shall be and are the interior surfaces of its perimeter walls, floors, and ceilings and the exterior boundaries of any balconies and terraces constituting a part thereof: and a Unit includes both the portion of the Buildings so described and the air space so encompassed, excepting the Common Elements. Any Unit may be jointly or commonly owned by more than one person. It is intended that the term "Unit" as used in this Declaration shall have the same meaning as the term "Apartment" as used in the Act.
- (x) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the undivided interest in the Common Elements appurtenant thereto, but shall not include those having an interest in a Unit merely as security for the performance of an obligation. Unless specifically provided otherwise herein, Declarant shall be deemed a Unit owner so long as it is the legal title holder of any Unit.

#### Section 1.2 Conveyance Provision

- (a) Submission of Property to the Act. Declarant, as the legal title holder in fee simple of the Parcel expressly intends to, and by recording this Declaration does hereby, submit the Parcel and the Property to the provisions of the Act. The Property is submitted to the provision of the Act subject to all easements and encumbrances affecting the Parcel recorded in the Official Public Records of Real Property of Harris County, Texas.
- (b) Plat. The Plat depicts the locations and other data, as required by the Act with respect to (1) the Parcel and its exterior boundaries; (2) the Buildings and each floor thereof; and (3) each Unit. Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimension shown by the Plat. By acceptance of a deed to a Unit each Unit Owner agrees that the square footage, size and dimensions of each Unit as set out and shown in this Declaration, as it may be amended, are approximate and are shown for descriptive purposes only. Each purchaser and owner of a Unit or interest therein shall have full opportunity and is under a duty to inspect and examine the Unit purchased by him prior to the purchase thereof. By acceptance of a deed to a Unit each Unit Owner agrees that the unit purchased is actually and physically existing and expressly waives any claim or demand which he may have against the

Declarant on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and the Unit as it is shown in this Declaration, as it may be amended. It is specifically agreed that in the interpreting deed, mortgages, deeds of trust and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Units or of any Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be the boundaries, regardless of settling, rising, or lateral movement of any Buildings and regardless of variances between the boundaries shown on the Plat and those of the Building.

- (c) Units. The legal description of each Unit shall consist of the identifying number of such unit as shown on the Plat. Every deed, lease, mortgage or other instrument shall legally describe a Unit by its identifying number as shown on the Plat and every such description shall be deemed good and sufficient for all purposes, as proved in the Act. Except as provided by the Act and with the prior written consent of any Mortgage holding a first lien Deed of Trust on any such Unit, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause this Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat.

## ARTICLE II

### RIGHTS AND RESPONSIBILITIES

#### Section 2.1 Unit Ownership and Mortgages.

- (a) Unit Ownership. Each Unit Owner shall have exclusive ownership of his respective Unit and shall have the common right to share, with all other Unit Owners, in the use of the Common Elements in accordance with the purpose for which hindering or encroaching upon the lawful rights of other Unit Owners. The legal estate of each Unit Owner will be held in fee simple or its statutory equivalent.
- (b) Mortgages. Each Unit Owner shall have the right, subject to the provision herein, to make separate Mortgages for his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created from the date hereof any Mortgage or other lien on or affecting the Property or any part thereof, except to the extent only of his own Unit and the respective percentage interest in the Common Elements appurtenant thereto.

#### Section 2.2 Utilities and Taxes.

- (a) Metered Utilities. Each Unit Owner shall pay for all utility services, including electricity and other utility services, if any separately metered for such Unit Owner's Unit. Each Unit Owner shall make such payments for separately metered utility services to the public utility company providing such utility service directly to the Unit Owner.



- (b) Separate Real Estate Tax. Taxes, assessments, and other charges of any taxing or assessing authority shall be separately assessed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that such taxes or assessments rather are assessed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements, and, in said even, authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Unit Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.

Section 2.3 Maintenance, Repairs and Replacements. Except to the extent the Board provides (at its option and discretion ) maintenance of the Units for Unit Owners, each Unit Owner at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own Unit. Maintenance of, repairs to and replacements within the Common Elements shall be the responsibility of and shall be furnished by the Association. The cost of maintenance of, repairs to and replacements, with the Units to the extent the Board elects to provide such services and with the Common Elements shall be part of the common expenses, subject to the Bylaws, rules and regulations of the Association. However, at the discretion of the Board, the Board may direct Unit Owners who stand to be benefited by such maintenance of, repairs to and replacements with in the Limited Common Elements to arrange for such maintenance, repairs and replacements in the name and for the account of such benefited Unit Owners, pay the cost thereof with their own funds, and procure and deliver to the Board such lien waivers and contractor's and subcontractor's sworn statements as may be required to protect the Property from all mechanic's or materialman's lien claims that may arise therefrom.

In addition to the discretionary authority provided herein for maintenance of all or any portion of the Units, the Board shall have the authority to maintain and repair any Unit, is such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Property, and the Unit Owner of said Unit has failed or refused to perform said maintenance or repair within reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board, and the Board shall levy a special assessment against the Unit of such Unit Owner for the cost of said necessary maintenance or repair.

If, due to the act or neglect of a Unit Owner, or his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repair or replacement are required which would otherwise be a common expense, then such Unit Owner shall pay for such damage or such maintenance, repair and replacements, as may be determined by the Association; however, the provision of this Paragraph are subject to the provision of Section 6.1 hereof providing for waiver of subrogation rights with respect to casualty damage insured against under the policies of insurance maintained by the Board.

Section 2.4 Decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors, ceilings of this Unit, and any balconies and maintain said interior surfaces in good condition at his sole and expense, as may be required from time to time. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Unit and may make any improvements or alteration within his Unit (but not to Common Elements) and shall have the right to paint, repaint, title, wax, paper, or otherwise furnish or decorate any interior surfaces of walls, partitions, ceilings and floors within the Unit, at his sole expense. Decorating

of the Common Elements (other than interior surfaces within the units as above provided and other than of Limited Common Elements) and any redecorating of Units, to the extent such redecorating of Units is made necessary by damage to the Units caused by maintenance, repair or replacements of the Common Elements by the Association, shall be furnished by the Association as part of the Common Expenses. All accessible windows forming part of a perimeter wall of a Unit shall be cleaned and washed at the expense of the Unit Owner of that Unit.

Section 2.5     Transfer of a Unit.

- (a) Unrestricted Transfers. Subject to Section (b) below, a Unit Owner may, without restriction under this Declaration, sell, give, devise, lease or otherwise transfer his Unit. It is expressly understood that the right of a Unit Owner to sell, transfer or otherwise convey the Owner's Unit shall not be subject to any right of first refusal or similar restriction in favor of the Association.
  
- (b) Limitations on Leasing of Units. Except for a first lender in possession following a default under a first deed of trust lien, a foreclosure proceeding, or any other arrangement in lieu of foreclosure proceeding, no Unit, or interest therein shall be leased by a Unit Owner for transient or hotel purposes. All lease agreements are required to be in writing and a copy of every such lease, as and when executed, shall be furnished to the Board. The lease shall expressly provide that the lessee shall be bound by the subject to all of the obligations, under the Declaration and Bylaws, of the Unit Owner making such a lease and that any failure by the lessee to comply with the terms and conditions of such documents shall be a default under the lease. The Unit Owner making such a lease shall not be relieved thereby from any of said obligations. No Unit Owner may lease less than the entire Unit.

Section 2.6     Common Elements-Ownership, Use and No Partition.

- (a) Ownership of the Common Elements. Unless adjusted as provided in Section 10.1 herein, each Unit Owner shall be entitled to the percentage of ownership in the Common elements allocated to the respective Units owned by such Unit Owner, as set forth in Exhibit B-1 attached hereto and by this reference made a part hereof for all purposes. Said ownership interest in the Common Elements shall be owned by the Unit Owners in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of undivided percentage of ownership in the Common Elements corresponding to the any Units shall be deemed conveyed or encumbered with the Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the title to the Unit.
  
- (b) Use of the Common Elements. Each Unit Owner shall have the right to use the Common Elements (except the Limited Common Elements and portion of the Property subject to leases made by or assigned to the Board) in common with all other Unit Owners, as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to not only each Unit Owner, but also his agents, servants, tenants, family members, customers, invitees

and licensees. However, each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving such Unit alone or with adjoining Units. Such rights to use the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provision of the Act, Declaration, Bylaws and rules and regulations of the Association. In addition, the Association shall have the authority to rent, lease, grant concession or grant easements with respect to parts of the Common Elements, subject to the provision of the Declaration and Bylaws. All income derived by the Association from leases, concession or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

- (c) No Partition. The Common Elements shall remain undivided and shall not be the object of partition or division of the co-ownership thereof so long as suitable for a condominium regime, and, in any event, prior to bringing an action for partition either (i) all first Mortgages must be paid in full or (ii) the consent of all institutional holders of first Mortgages must be acquired.

Section 2.7 Parking Spaces; Storage Areas. Parking spaces (“Parking Spaces”) and storage spaces (“Storage Spaces”) designated on the Plat shall be Limited Common Elements limited to the exclusive use of the Unit Owner to which such areas are assigned by the Plat. The Parking Space or Parking Spaces and Storage Space or Storage Spaces so assigned to any Unit shall be specified in the instrument of conveyance conveying the Unit to its initial Unit Owner. Thereafter, such Parking Spaces and Storage Spaces shall be deemed appurtenant to such Unit, and shall be deemed to be transferred with any conveyance of such Unit. Notwithstanding the right of exclusive use granted to any Parking Space or Storage Area in connection with the conveyance of a Unit, such areas shall remain Limited Common Elements and shall be maintained by and remain subject to the control of the Association.

Section 2.8 Encroachments. If any portion of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portion of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and Unit areas shown by the Plat as a result of the construction, reconstruction, repair, shifting, settlements or movement of any portion of the Property, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved, to the extent of the encroachments and for the maintenance of the same, so long as the same shall exist. None of the rights and obligations of the Unit Owners created herein, or by any deed delivered to any Unit Owner, shall be altered in any way by said encroachments.

### ARTICLE III

#### RESTRICTIONS

Section 3.1 Use and Occupancy Restriction. Subject to the provision of this Declaration and Bylaws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed. Each Unit or any two or more adjoining Units used together shall be used as a residence or such other use permitted by this Declaration, and for no other purpose, except that professional and quasi-professional people may use their residence as an ancillary or secondary facility to an office established elsewhere. The foregoing restrictions as to residence shall not,

however, be constructed in such manner as to prohibit a Unit Owner from (1) maintaining his personal professional library; (2) keeping his personal business or professional records or accounts; or (3) handling his personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions.

That part of the Common Elements separating and located between and exclusively serving two or more adjacent Unit used together (including, without limitation, portions of any hallway and any wall) may be altered to afford ingress and egress to and from such Units and to afford privacy to the Occupants of such Units when using the Common Elements, and that part of the Common Elements so altered may be used by the Unit Owner or Owners of such Units as a licensee pursuant to a license agreement with the Association, provided (1) the expense of making such alteration shall be paid in full by the Unit Owner or Owners making such alterations; (2) such Unit Owner or Owners shall pay in full the expense of restoring such Common Elements to their condition prior to such alteration in the event such Units shall cease to be used together as aforesaid; (3) such alteration shall not interfere with use and enjoyment of the Common Elements (other than the foresaid part of the Common Elements separating such adjacent Units), including without limitation, reasonable access and ingress to and egress from the other Units in the hallway affected by any such alteration.

The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access purposes incidental to use of the Units; provided, however, the garage, recreation rooms, storage areas, boat ramp area, swimming pool area and other areas designed for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession or easement, presently in existence or entered into by the Declarant or the Association at some future time, affecting any part of all of said Common Elements.

Without limiting the generality of the foregoing provision of this Section, use of the Property by the Unit Owners shall be subject to the following restrictions:

- (a) Nothing shall be stored in the Common Elements without prior consent of the Board except in storage areas or as otherwise herein expressly provided;
- (b) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in this unit or in or on the Common Elements which will result in the cancellation of insurance on any Unit, or any part of the Common Elements, or which will be in violation of any law;
- (c) No waste shall be committed in or on the Common Elements;
- (d) Subject to Declarant's rights under Subsection 4.9 (b) of this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board or the written consent of the managing Agent acting in accord with the Board's direction;
- (e) No noxious or offensive activity shall be carried on in any Unit or on or in the Common Elements nor shall anything be done therein which may be or become an annoyance or nuisance to the other Unit Owners;

- (f) Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board;
- (g) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however that temporary structures may be erected for use in connection with the repair or construction for the Buildings or any portion thereof;
- (h) Outdoor drying of clothes shall not be permitted;
- (i) Parking of vehicles in driveways and parking areas shall be subject to the rules and regulations of the Board applicable thereto;
- (j) Except within individual units, no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board;
- (k) Motorcycles, motor bikes, motor scooter or other similar vehicles shall not be operated within the Property except for the purpose of transportation directly from a parking space to a point outside the Property, or from a point outside the Property directly to a parking space;
- (l) Camping trailers shall not be stored on the Property;
- (m) Boat trailers and boats on trailers owned by Unit Owners may be parked in or on one of the Parking spaces assigned to the Unit Owner's Unit provided;
  - 1. the storage of such boat trailer or boat on trailer does not restrict or inhibit any other Unit Owners' use of assigned parking spaces, assigned storage spaces or Common Elements;
  - 2. the normal movement or flow through the parking garage level by any Unit Owners or their agents, servants, tenants, family members, customers, invitees, or licensees is not restricted or hindered by the boat trailer or boat on trailer;
  - 3. the boat trailer or boat on trailer stored in or on the Unit Owner's assigned parking spaces does not require that Unit's Owners, or their servants, tenants, or family members to utilize unassigned parking spaces or guest parking of parking, storage, or any purpose other than for a temporary purpose not to exceed three hours in length.
  - 4. that during times of flood water warnings or at the sole discretion of the Board all stored boats or boats on trailers shall be removed from the parking area by the boat owner or by the Board or the Managing Agent acting in

accord with the Board's direction at the boat owners expense until such time as the imminent threat of flood water no longer exist.

- (n) No Owner shall install, attach or hang or allow to be installed, attached or hung any equipment or wiring or electrical installations television or radio transmitting or receiving antennas, air condition in units or any other like equipment or wiring in or across any portion of any Common Elements or protruding from any balcony or through any wall, floor, ceiling, window or door which is a Common Element, except as approved by the Association. All radios, televisions electrical equipment or appliances or any kind or nature and the wiring therefor installed or used in a Unit shall fully comply with all rules, regulations or requirements of all state and local public authorities having jurisdiction;
- (o) Each Owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations or requirements of any governmental agency or authority with respect to the occupancy and use of his Unit and with the provisions hereof , and the Bylaws and Rules and Regulations promulgated hereunder.

Section 3.2 Windows and window coverings. No Owner shall replace, cover, or otherwise modify any window (including sliding glass doors) or screen in or on any Unit without the prior written approval of the Board. All drapes, curtains, blinds, or other window coverings shall be such that a solid color of white is visible from the exterior when the drapes, curtains, blinds or other window coverings are drawn or closed in the order to provide a more uniform appearance of the exterior of the Building;

Section 3.3 Balconies. No Owner shall paint, remodel decorate or enclose any balcony or store objects or things on such balcony or dry clothing or place other material on such balcony in any manner which is likely to impair the uniform appearance of the exterior of the Building. An Owner may furnish a balcony with outdoor furniture in keeping with the provisions of this Declaration and the Rules and Regulations promulgated thereunder;

Section 3.4 Alterations, Additions or Improvements. No Owner shall do any act or permit any act to be done in, or on to any Unit , balcony, Parking Space, Storage Space or Limited Common Elements which will impair the structural integrity, weaken the support or otherwise adversely affect the Buildings or any Common Element. Except as Provided in Section 3.1 above no alteration of any Common Elements, or any addition or improvements thereto, shall be made by a Unit Owner without the prior written approval of the Board. The Board may authorize and charge as common expenses alterations, additions and improvements of the Common Elements as provided in the Bylaws. Any Unit Owner may make alterations, additions or improvements within the Unit of the Unit Owner without the prior written approval of the Board, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Property or any part thereof, resulting from such alterations, additions or improvements.

Section 3.5 Additional Provisions. The Association by provision of its Bylaws or by Rules and regulations enacted pursuant to the provisions thereof , may provide such additional rules and regulations of use of the Units, the Common Elements and Limited Common Elements, including the Parking Spaces and the Storage Spaces, as are necessary or desirable in the

judgement of the Association for the operation of the Property as a condominium , provided such rules and regulations any Bylaws are not in conflict with the provision of this Declaration. Such Bylaws and rules and regulations shall be applicable to the Units, the Common Elements and the Limited Common Elements as though set forth herein at length.

## ARTICLE IV

### ASSOCIATION OF UNIT OWNERS

Section 4.1 Authority of the Association. There has been or will be formed an Association having the name “Egret Bay Villas Condominium Association” a Texas non-profit corporation, which Association shall be the governing body for all of the Unit Owners and shall have the right, power and duty to provide for the maintenance, repair, replacement, administration and operation of the Property, as specified in this Act, this Declaration and the Bylaws. The business and affairs of the Association shall be managed by its Board of Directors. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association and all funds received by it shall be taken, held and applied by it for the use and benefit of the Units Owners in accordance with the provision of this Declaration, the Articles of Incorporation of the Association (the “Articles”), and the Bylaws.

Section 4.2 Membership in the Association, Meetings of the Members, and Voting of Members. Membership in the Association, meetings of the members and voting of members shall be as provided in the Articles and Bylaws.

Section 4.3 Board of Directors. The Board of Directors of the Association shall be elected and serve in accordance with the provision of the Bylaws.

Section 4.4 Officers. The Officers of the Association shall be elected by the Board of Directors according to the provisions of the Bylaws.

Section 4.5 Administration and Operation of the Property. The Association, acting through its Board of Directors, its officers or other duly authorized management representatives, shall manage the business and affairs of the Property as a condominium; shall, without limitations, have the powers of collection and enforcement set forth herein; and for the benefit of all of the Unit Owners shall provide, perform, cause to be performed, maintained, acquired, contracted and paid for out of the Common Expense Fund the following:

- (a) Utility services used in or for the Common Elements, water and sewer services used by or consumed by the Unit Owners, and if not separately metered or charged, other utility services for the Unit Owners. Electricity, telephone, and other utility services separately metered or charged shall be paid for by the Unit Owner of the Unit served by such utility services.
- (b) The insurance required by Section 6.1 hereof and such other policies of casualty, liability and /or other insurance covering person, property and risks as are in the best interest of the Property and the Association.
- (c) The services of a managing agent as herein provided and such other persons as the Board shall from time to time determine are necessary or proper to the daily management, operation and maintenance of the Property.

- (d) All supplies, tools and equipment reasonably required of use in the management, operations, maintenance, cleaning and enjoyment of the Property.
- (e) The cleaning, maintenance, repairing, reconstruction and replacement of the Common Elements as the Board shall determine is necessary.
- (f) The services of gardeners, security guards, and such persons to the extent necessary for the operation of the Property in the manner desired by the member of the Association.
- (g) The removal of all trash, garbage and rubbish from the central garbage receptacle or receptacles; including the employment of the services of a garbage collection company or agency, public or private.
- (h) Costs of bookkeeping of the accounts of the Association and the annual audit provided for herein; legal and accounting services and fees for the Association; premiums of fidelity bonds; taxes or assessments of whatever type assessed or imposed against any of the Common Elements.

Nothing herein shall authorize the Board to furnish to any person services primarily for the benefit or a convenience for any Unit Owner or Owners or any Occupant or Occupants of any Unit other than services customarily rendered to all Unit Owners and Occupants. The Board shall have the exclusive right and the obligation to contract for all goods, services and insurance in the connection with the administration of the Property as a condominium, payment of or which is to be made from the Common Expense Fund.

#### Section 4.6     Management of the Property

- (a) **Managing Agent.** The Board shall have the authority and duty to engage the services of a managing agent (“Managing Agent”) (whose business expertise includes the professional management of condominiums) to maintain, repair, replace, administer and operate the Property. The Management Agreement entered into between the Board and Managing Agent shall be in writing and shall provide for payment to the Managing Agent of the management fee no higher than is usually paid to manager with similar qualifications, managing similar residential buildings (whether rental or condominium) in the Houston –Galveston area of Texas. The said management fee shall be a common expense. Additionally, the said Management Agreement shall provide for termination by the Association for cause, upon thirty (30) days written notice thereof , and shall provide for fidelity bonding of the Managing Agent, his employees or other persons or entities under his control who will or may handle the funds for the Association. The term of the Management Agreement shall not exceed one year, renewable by the agreement of the parties for successive one year periods.
- (b) **Termination of the Professional Management.** Notwithstanding any provision of this Declaration or any other establishing document to the contrary, this Section 4.6 may not be amended, changed, modified or rescinded and the Association may not terminate professional management and assume self management of the Property without prior written approval of each institutional holder of a first lien Deed of Trust of records on any Unit.



- (c) **Initial Management.** Until control of the Association is vested in the purchasers of the Units (as proved for tin Section 4.11 herein) and a new Board is elected and qualified, the Initial Board, as appointed in the Articles of Incorporation of Egret Bay Villas Condominium Association shall exercise all the powers, rights, duties and function of the Board for the benefit of the Unit Owners. The initial Board shall engage the services of the Managing Agent which may or may not be affiliated with the Declarant, to manage the Property under an initial date control of the Association comes vested in the Unit purchaser. Such Management Agreement shall provide for a management fee as specified in Subsection (a) above; provided, however, that if the Managing Agent is affiliated with Declarant it is hereby agreed that at reasonable management fee would be Twenty-Five Thousand Dollars (\$25,000) per annum.

**Section 4.7 Non-Liability of Board of Directors, Officers and Declarant; Board's Determination Binding.**

- (a) **Non-Liability of the Board of Directors, Officers and Declarant.** Neither the Board nor Officer of the Association nor Declarant shall be personally liable to the Unit Owners for any mistake of judgement or for any acts or omissions of any nature whatsoever as such directors, Board, Officers or Declarant, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the directors, Board, officers or Declarant, and their respective heirs, executors, administrators, successors and assigns in accordance with the provision of the Bylaws.
- (b) **Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question of interpretation or application of the provision of the Declaration or Bylaws, such dispute or disagreement shall be submitted to the Board. The determination of such dispute or disagreement shall be binding on each and all such Unit Owners, subject to the right of Unit Owners to seek other remedies provided by law after such determination by the Board.

**Section 4.8 Accounting and Audit.** The Board shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting the Property and its Administration and specifying the maintenance and repair expenses of the Common Elements and any expenses incurred by or on behalf of the Assoca9ion. Both the books of accounts and all vouchers supporting the entries made therein shall be available for the examination at the office of the Association by all Unit Owners at convenient hours on working days and the Board of Directors shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with generally accepted accounting procedures, consistently applied and shall be audited at least once a year by an outside auditor after the end of the fiscal year. The fiscal year of the Association shall be the calendar year unless another period is established by and amendment of the Bylaws.

Additionally, any institutional holder of a first mortgage on a Unit will, upon request, be entitled to: (1) examine the books of accounts and supporting documentation of the Association during the established business hours; (2) receive an annual audited financial statement of the books and records; and /or (3) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 4.9 Rights of Entry and Use by Association and by Declarant.

- (a) Right to Entry. The Association or its duly authorized representatives shall have the right and authority to enter any Owners Unit for the purposes of :
- (1) Making repairs therein;
  - (2) Performing necessary maintenance repairs or replacements to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units, Common Elements and Limited Common Elements;
  - (3) Abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Owner's Unit;
  - (4) Protecting the property rights and welfare of other Unit Owners;
  - (5) Enforcing the provisions of this Declaration, the Bylaws or th Rules and Regulations promulgated thereunder;
  - (6) Effecting emergency or other necessary repairs which the Unit Owner has failed to perform;
  - (7) Preserving any Unit, Common Element or Limited Common Element in the event of an emergency; and
  - (8) Making any alteration required by any governmental authority.

Except in the event of an emergency, such right of entry shall be exercised only in the presence of the Unit Owner or other Occupant of the Unit which is entered. In all events, such right of entry shall be exercised in such manner as to avoid any unreasonable or unnecessary interference with the possession, use or enjoyment of the Unit by the Unit Owner or Occupant thereof and shall, whenever possible, be preceded by reasonable notice to the Unit Owner or Occupant thereof. In the event that any damage is caused to the property of any Unit Owner in connection with the exercise of any such right of entry, such damage shall be repaired at the expense of the Association and the Board is authorized to expend Common Expense Funds therefore.

- (b) Use of Declarant. Until all Units of the Property are conveyed by Declarant to the third party purchaser, the Declarant and its agents, employees, contractors and subcontractors and their respective agents and employees, shall be entitled to all use of , access, ingress to and egress from the Buildings and Property as may be required for purposes of construction completion and sale of Units or other improvements relating to the Property of any phase to be added to the Property as provided in Section 10.1 while the Declarant owns any of the Units and until each Unit sold by it is occupied by the purchaser, the Declarant, its employees and agents may use and show one or more of such unsold or unoccupied Units as a model Unit or Units and may use one or more of such unsold or unoccupied Units as a sales office, and may maintain customary signs in connection therewith.

Section 4.10 Action without Meetings and Notices.

- (a) Action without Meetings. Any action required by this Declaration or by the Bylaws to be taken at a meeting of the members of the Association or at a meeting of the Board 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 of the Association or of the Board, as the case may be, entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as unanimous vote as such meeting.
- (b) Notices. Any notice permitted or required to be given to a member of the Board or to a Unit Owner or Occupant may be delivered personally, by mail or by placing such notice in the mail distribution facilities of each Unit Owner or Occupant if such facilities are present on the Property. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after deposit in the U.S. Mail, postage prepaid, addressed to a Unit Owner may have given in writing to the Secretary of the Association for the purpose of service of notices. Any address for purpose of notice may be changed from time to time by notice in writing to the Secretary.

Section 4.11 Control of the Association. Control of the Association will become vested in the purchasers of the Units on the date of the first annual meeting of the Association which shall be held not more than one hundred twenty (120) days after the date on which the Declarant has sold and delivered its deeds and received the full purchase price for at least eighty percent (80%) of the Units. Eighty percent (80%) of the Units shall mean Units which correspond, in aggregate, to 80% of the total undivided ownership of the Common Elements.

## ARTICLE V

### COMMON EXPENSE FUND, ASSESSMENTS, COLLECTION

Section 5.1 Common Expense Charges. Each Units Owner, including the Declarant shall be obligated to contribute, in proportion to their Percentage Ownership Interests, to a fund to be maintained and disbursed by the Association (the "Common Expense Fund") for the payment of common expenses, the expenses of administration of the Association and the administration, expenses provide by the terms hereof to be paid by the Association pursuant to this Declaration, the Bylaws and the Rules and Regulations. Such contribution to the Common Expense Fund are herein referred to as "Common Expense Charges." Except for its responsibilities as a Unit Owner, as provided herein, the Declarant shall not have any responsibility for the maintenance, repair or replacement of any part of the Common Elements. Payment of the Common Expense, Charges, including any prepayment thereof required by contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. No Unit Owner shall be exempt from the payment of his proportionate Common Expense Charges by waiver of non-use or waiver of enjoyment of the Common Elements or Limited Common Elements or by abandonment of his Unit or under any other circumstances.

Section 5.2 Budgets, Establishment of Common Expense Charges and Special Assessments. The Preparation of Budgets and the establishment and levy of Common Expense Charges and Special Assessments shall be accomplished in accordance with the provisions of the Bylaws.

Section 5.3 Payment of Common Expense Charges and Special Assessment. No Unit Owner, including Declarant, shall be liable or assessed for any Common Expenses, Common Expense Charge, or Special Assessment attributable to his Unit or Units until such time as such Unit or Units is/are complete and ready for occupancy. Common Expense Charges shall be due and payable monthly in advance. Special Assessments shall be payable on or before ten (10) days after Units Owners are

invoiced therefor. Payment of Common Expense Charges and Special Assessments, shall be in default in such Common Expense Charge or Special Assessments, or any part thereof, are not paid to the Association on or before the due date for such payment of his Common Expense Charges or Special Assessments when due, the amount thereof together with interest thereon at the maximum rate as may be permitted under the laws of the State of Texas, accruing from and after the date that said Common Expense Charges or Special Assessments become due and payable, shall constitute a lien on the interest of such Unit Owner in the Property and his Unit. Each Unit Owner (whether one or more persons) shall be personally liable for the payment of all Common Expense Charges and Special Assessments which may be levied against such Unit owner and his Unit pursuant to the provisions hereof.

Section 5.4 Enforcement of Lien. The Board may bring an action at law against the Unit Owner personally obligated to pay the same, for collection of his unpaid Common Expense Charges or Special Assessments, or foreclose the lien against the Unit or Units owned by such Unit Owner, and interest, cost and reasonable attorney's fees of any such action shall be added to the amount of a deed to a Unit, hereby expressly vests in the Board or its agents the right and power to bring all action against such Unit Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 3810 of the Revised Civil Statutes of Texas and each such Unit Owner hereby expressly grants the Board a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Board and shall be for the common benefit of all Unit Owners. The Board shall have the authority to appoint a trustee, and thereafter successor trustees from time to time, to act on behalf of the Board in foreclosing such lien and such appointment may be made without any formality other than a written appointment of the trustee or successor (substituting) trustee, and the Board may appoint a substitute trustee at any time in its discretion. The Board acting on behalf of the Unit owner shall have the power to bid upon any Unit or interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Except as may be provided by law and except in the circumstance in which a good faith dispute exists as to the amount of any Common Expense Charges or Special Assessments shall not be entitled to vote at any meeting of the Association so long as such default exists.

Section 5.5 Mortgage Protection. The lien for Common Expense Charges and Special Assessments payable by a Unit Owner shall be subordinate to any lien granted by Declarant to secure any construction loan for the development of the Property and the lien of a prior recorded first lien Deed of Trust on the interest of such Unit Owner, except for amounts which become due and payable from and after the date on which the Mortgagee thereunder either takes possession of the Unit encumbered thereby, accepts a conveyance of any interest therein (other than as security) or forecloses its Mortgage; that is, each holder of a first Mortgage on a Unit who comes into possession for the Unit by virtue of foreclosure, or any purchaser at a foreclosure sale, will take the Unit which accrue prior to the time such holder or purchaser comes into possession of the Unit. However, claims for a pro-rate share of such unpaid assessments or charges resulting from a pro-rate reallocation of such unpaid assessments or charges to all Unit Owners, including the Mortgage Unit, are assessable for the subsequent holder and purchaser.

Notwithstanding any provision of this or any other establishing document to the contrary, this Section may not be amended, changed, modified or rescinded without prior written approval of all institutional holders of first Mortgages of record on any Unit.

Section 5.6 Common Expense Fund. The Common Expense Charges and Special Assessments collected shall be paid into the Common Expense Fund to be held and used for the benefit, directly or indirectly of the Property; and such Common Expense Fund may be expended by the Board for

the purposes set forth herein including, without limitation, providing for the enforcement of the provisions of this instrument, the Bylaws and the rules and regulations promulgated thereunder; for the maintenance operation, repair, benefit and welfare of the Common Elements and generally for doing those things necessary or desirable in the opinion of the Board to maintain or improve the Property. The use of the Common Expense Fund for any of these purposes, except as provided herein, is permissive and not mandatory, and the decision of the Board with respect thereto shall be final, so long as made in good faith.

## ARTICLE VI

### INSURANCE

Section 6.1 General Provision. The Board shall have authority to and shall obtain insurance for the Property as follows:

- (a) Insurance on the Buildings, including the Units and the Common Elements, against loss or damage by fire and loss or damage by all risks now or hereafter embraced by standard extended coverage policies in use in the State of Texas ( with vandalism and malicious mischief endorsements), in amounts sufficient to prevent the Association or the Unit owners from becoming a co-insurer within the terms of the applicable policies , but in any event in an amount not less than the full insurable replacement cost thereof. The “full” insurable replacement cost” of the Buildings, including the Units and the Common Elements shall be deemed the cost of restoring the Common Elements, Units or any part thereof to substantially the same condition in which they existed prior to damage or destruction and shall be determined from time to time but not less often than once in a twelve month period by the Board and the Board shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board in making such determination. The cost of any and all such appraisals shall be borne by the Common Expense Fund.
- (b) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or any Unit Owner or Occupant or the family, agent, employee, invitee or licensee or any Unit Owner or Occupant, occurring in, on or about the Common Elements or upon, in or about the private driveways, roadways, walkways and passageways, on or adjoining the Property which public liability and property damage insurance shall afford protection to such limits as the Board shall deem desirable. Such liability and property damage insurance policy shall contain a cross liability endorsement wherein the rights of named insureds under the policy or policies shall no prejudice his, her or their action or actions against another name insured.
- (c) Such workman’s compensation insurance as may be necessary to comply with applicable laws.
- (d) Employer’s liability insurance in such amount as the Board may deem desirable.
- (e) Fidelity bonds indemnifying the Association, the Board and the Unit Owner from loss of funds resulting from fraudulent dishonest acts of any employee of the Association or any other person handling the funds of the Association in such an amount as the Board may deem desirable.

(f) Such other insurance in such reasonable amounts as the Board may deem desirable.

The premiums for all insurance acquired on behalf of the Association or the Unit Owners pursuant to the provision hereof shall be borne by the Common Expense Fund.

All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Texas. All policies of insurance of the character described in Subsection (a) of this Section 6.1 shall name as insureds the Association and each Unit Owner in the percentage ownership interest established in this Declaration; shall contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any as their respective interest may appear; shall be without contribution with regard to any other such policies of insurance carried individually by any Unit Owner, whether such other insurance covers the Unit owned by such Unit Owner and/or the additions and improvements made by such Unit Owner to his respective Unit; shall provide that such policy shall not be terminated for non-payment of premiums or for any other cause without at least thirty (30) days prior written notice to the Mortgagee of each Unit; shall, if possible, contain an endorsement extending coverage to include the payment of Common Expense charges with respect to Units damaged during the period of reconstruction thereof; and shall also contain, if possible, a waiver of subrogation rights by the insurer against individual Unit Owners.

In the event that an insurance policy or policies specifically designed to meet the insurance needs of condominium regimes becomes available in Texas through action by appropriate governmental agencies or otherwise, the Board shall be authorized to obtain such a policy if the coverages provided by such policy are at least equal to the coverages provided by those policies enumerate hereinabove.

The Board shall also have authority to and may obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Association, and member of any committee appointed pursuant to the Bylaws from liability arising from the fact that said person is or was director or officer of the Association, or a member of such committee. The premiums for such issuance shall be a common expense.

Section 6.2 Individual Insurance. Each Unit owner shall be responsible for obtaining his own insurance on the contents of his own Unit and the contents of the Limited Common Elements serving his Unit, as well as his decorating, furnishing and personal property therein, and his personal property stored elsewhere on the Property. In addition, in the event a Unit Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent insurance and insurance against loss or damage by fire an such other hazards obtained by the Board for all of the Unit Owners as part of the common expenses, as above provided, said Unit Owner may at his option and expense, obtain additional insurance. All policies of casualty insurance carried by each Unit Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Association for the benefit of all of the Unit Owners as above provided.

## ARTICLE VII

### FIRE OR CASUALTY; REBUILDING; TERMINATION

Section 7.1 Determination of Loss and Notification of Mortgagees.

- (a) **Determination of Loss.** In the event of a fire or other casualty causing damage or destruction to the Buildings, the Board shall determine whether such loss comprises the whole or more than two-thirds of the Buildings. Unless otherwise provided by law, such determination shall be made by determining whether the cost of necessary repair or reconstruction would exceed two-third of the cost of reconstruction the Buildings as they existed prior to such fire or other casualty.
- (b) **Notification of Mortgagee.** In the event of a fire or other casualty causing substantial damage to or destruction of that Unit or any part of the Common Elements, the Boards shall give written notice of such damage or destruction to the insurance carrier and to all first Mortgagees appearing of record to have any interest in the Unit or Units destroyed or damage. Substantial damage or destruction shall be deemed to have occurred whenever insurance proceeds would be forthcoming. No provision of this or any other establishing document shall be constructed to entitle the Unit Owner or other interested parties to priority over the said first mortgagees, with respect to the distribution to such Unit of any insurance proceeds.

Section 7.2 **Rebuilding.** In the event of a fire or other casualty which does not damage or destroy more than two-thirds of the Building, unless otherwise unanimously agreed to by the Unit Owners and permitted by law, the Buildings shall be repaired and reconstructed in accordance with the following provision:

- (a) If any one of the Buildings is damaged by fire or other casualty and said damage is limited to a single Unit, all insurance proceeds shall be paid to the Unit Owner or one or more Mortgagees of such Unit, as their respective interests may appear, and such Unit owner or Mortgagees shall use the same to rebuild or repair such Unit substantially in accordance with the original plans and specifications therefor.
- (b) If such damage extends to two or more Units, or extends to any part of the Common Elements, then all proceeds of insurance policies with respect to such fire or casualty, carried by the Association shall be paid to a bank selected by the Board, as Trustee, insured by the Federal Deposit Insurance Company (or its successor) and located in Harris or Galveston Counties, Texas to be held in trust for the benefit of the Unit Owners and their Mortgagees as their respective interest may appear. The Board shall thereupon contract to repair or rebuild the damaged portions of all Units, Buildings and Common Elements in accordance with the original Plans and Specifications therefore and the funds held in trust in such depository bank shall be used for this purpose and disbursed by the Board in accordance with the terms of the contract for repair and rebuilding.

In the event that such insurance proceeds are insufficient to provide for such repair, restoration or rebuilding, the building cost in excess of the insurance proceeds shall be assessed against all the Unit Owners, in proportion to the Percentage Ownership Interest of each Unit Owner. Such Special Assessments shall not require the consent of the member of the Association. If any Unit Owner shall fail to pay to such Special Assessment when due, the Boards may make up the deficiency by payment from the Common Expense Fund, which payment shall in no way release the Unit Owner who has failed to make payment of such Special Assessments from the liability therefor. Such assessments shall be enforceable as provided for other Special Assessments

herein. The provisions of this Section may be changed only by unanimous resolution of the Unit Owners, adopted subsequent to the date on which fire or casualty loss occurs.

Section 7.3 Repair of Individual Units. Each Unit Owner shall be responsible for the cost not otherwise covered by insurance carried by the Association caused by his negligence or misuse or by the negligence or misuse of his immediate family, and his agent or employees in the course of their duties, and shall, to the extent not covered by insurance collected by the Association, indemnify the Association and all Unit Owners against any such cost of reconstruction, repair and replacement of any portion of the Buildings.

Section 7.4 Indemnity of Association. Each Unit owner shall be responsible for the cost not otherwise covered by insurance carried by the Association caused by his negligence or misuse by the negligence or misuse of his immediate family, and his agents or employees in the course of their duties, and shall to the extent not covered by insurance collected by the Association, indemnify the Association and all other Unit Owners against any such cost of reconstruction, repair and replacement of any portion of the Buildings.

Section 7.5 Termination. In the event that fire or other casualty damages or destroys the whole or more than two-thirds of the Buildings, unless otherwise unanimously agreed by the Unit Owners, all proceeds of insurance policies carried by the Association and all accrued and collected Common Expenses charges shall be held for delivery to the Unit Owners or their Mortgagees, as their interest may appear of record, in proportion of the percentage Ownership Interest of each Unit Owner and the Association shall take such action as may be necessary to terminate the condominium regime established in this Declaration. Upon such termination, the Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Unit Owners as tenants-in-common in the Percentage Ownership Interests previously owned by each Unit Owner in the Common Elements, and the Board, as soon as reasonably possible and as agent for the condition, free from the effect of this Declaration, on terms satisfactory to the Board, and the net proceeds of such sale, and all funds held by the Association and by said insurance trustee, shall thereupon be distributed to the Unit owners or their Mortgagees, as their interest may appear, in proportion to the percentage interest of each Unit Owner in the Common Elements.

If it is unanimously agreed that the Buildings shall be repaired and reconstructed, then the rebuilding provision of Section 7.2(b) above shall be followed.

Section 7.6 Declaration of Damage or Termination.

- (a) Declaration of Damage. Within sixty (60) days after any such damage occurs, the Managing Agent, or the Board shall, or if they do not, any Unit Owner, the insurer, the insurance trustee or any Mortgagee may, record a sworn declaration stating that such damage has occurred, describing it, identifying the Buildings suffering such damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, reciting that the sworn declaration is recorded pursuant to this section of this Declaration, and that a copy of such sworn declaration has been given pursuant to the provision of Section 9.3 hereof to the Units Owners.
- (b) Declaration of Termination. If the Unit Owners should not rebuild pursuant to the Section 7.5 above, and the Board fails to consummate a sale pursuant to said section within twenty-four (24) months after the destruction or damage occurs, then the



managing Agent, or the Board shall, or if they do not any Unit Owner or Mortgagee may, records a sworn declaration setting forth such decision and reciting that under the provision of this Declaration the prohibition against judicial partition provided for in hereof has terminated and that judicial partition of the Property may be obtained pursuant to the laws of the State of Texas. Upon final judgment of a court to competent jurisdiction decreeing such partition, this Declaration shall terminate.

## ARTICLE VIII

### EMINENT DOMAIN

Section 8.1 General Provisions. If all or part of the Property in taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary) the Board and each Unit Owners shall be entitled to participate in proceedings, incident thereto at their respective expense. The Boards shall give written notice of the existence of such proceedings incident thereto at their respective expense. The Board shall give written notice of the existence of such proceedings to all Unit Owners and to all first Mortgagees appearing of record to have an interest in any Unit. The expense of participation in such proceedings by the Board shall be borne by the Common Expense Fund. The Board is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Board in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Board, acting as trustee, and such damages or awards shall be applied or paid as provided herein. No provision for this or any other establishing document shall be construed to entitle the Unit Owner or any other interested parties to priority over the said first Mortgagees with respect to the distribution of the process of any awarded or settlement of any condemned Unit.

Section 8.2 Taking of Common Elements. In the event that an action in eminent domain is brought to condemn a portion of the Common Element (together with or apart from any Units), the Board, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceedings, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceedings. With respect to any such taking of Common Elements only, all damages and awards shall be determined for such taking as a whole and not for each Unit Owner's interest therein. After the damages or awards shall be paid to each Unit Owner in proportion to his Percentage Ownership Interest. The Board may, if it deems advisable, call a meeting of the Unit owners at which meeting the Unit Owners, by a majority vote, shall decide whether to replace or restore as far as possible the Common Elements so taken or damaged. In the event it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Plat shall be duly amended by instrument executed by the Board of Directors on behalf of the Unit Owners.

Section 8.3 Taking of the Units. In the event that such eminent domain proceedings result in the taking of or damage of one or more, but less than two-thirds of the total number of Units, then the damages and awards for such taking shall be determined for each Unit and the following shall apply:

- (a) The Board shall determine which of the Units damaged by such taking may be made tenable for the purposes set forth in the Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged.

- (b) The Board shall determine whether it is reasonably practicable to operate the remaining Units including those damaged Units which may be made tenantable as a condominium in the manner provided in this Declaration.
- (c) In the event that the Board determines whether it is reasonably practicable to operate the undamaged Units and the damaged Units which can be made tenantable as a condominium, then the Association shall take action as may be necessary to terminate the condominium established by this Declaration which shall be regrouped and merged into a single estate owned jointly in undivided interest by all Unit Owners, as tenants-in-common, in the Percentage Ownership Interests previously owned by each Unit Owner.
- (d) In the event that the Board determines that it will be reasonably practicable to operate the undamaged Units and the damaged Units which can be made tenantable as a condominium, then the damages and awards made with respect to each Unit which has been determined to be capable of being made tenantable shall be applied to repairs and reconstruct such Unit so that it is made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of those Units which are being repaired or reconstructed so as to be made tenantable. With respect to those Units which may not be made tenantable, the award made with respect to such Units shall be paid to the Unit Owner of such Unit or his Mortgagee or Mortgagees, as their interest may appear, and the remaining portion of such Units, if any shall become a part of the Common Elements and repairs and use of such Units shall be determined by the Board. Upon the payment of such award for the account of such Unit Owner as provided herein, such Unit shall no longer be a part of the Property and the Percentage Ownership Interest appurtenant to each remaining Unit which shall continue as part of the Property shall be equitably adjusted to distribute the ownership of the undivided interest in the Common Elements among the reduced number of Unit Owners.

If the entire property is taken, or two-thirds (2/3) or more of the Units are taken or damaged by such taking, all damages and awards shall be paid to the accounts of the Units Owners, as provided herein, in the proportion to their Percentage Ownership Interest and this condominium regime shall be terminated. Upon such termination, the Units and Common Elements shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Unit Owners as tenants-in-common in the Percentage ownership Interest previously owned by each Unit Owner in the Common Elements.

Section 8.4 Payment of Awards and Damages. Any damages or awards provided in this Article to be paid to or for the account of any Unit Owner by the Board, acting as Trustee, shall be applied first to the payment of any taxes or assessments by the governmental authorities past due and unpaid with respect to that Unit; secondly, to amounts due under any mortgage instruments duly perfected; thirdly, to the payment of any Common Expense Charges or Special Assessments charged to or made against the Units and unpaid; and finally to the Owner of such Unit.

## ARTICLE IX

### AMENDMENT, ABANDONMENT, NOTICES

Section 9.1 Amendment. Provided that (i) all holders of records of liens or Unit have been notified by certified mail of such charges, medication or recession and an affidavit by the secretary of the

Association certifying to such mailing is made part of such instrument and (ii) each institutional holder of any first lien deed of trust or records on any Unit has approved of such change, modification or rescission, and (iii) at a meeting of the Unit Owners, eighty percent (80%) of the total individual ownership of the Common Elements approved such amendment, the provision of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission and signed and acknowledged by Unit Owners owning not less than eighty percent (80%) of the total individual ownership of Common Elements. Except as may result from the addition of Phase II to the Property as provided in Section 10.1 of this Declaration shall not be amended or modified without the consent of all Unit Owners or of all Mortgagees for any action specified in the Act or in this Declaration with respect to such action shall be signed by all the Unit Owners or all Mortgagees or both as required by the Act or this Declaration.

Declarant shall have the authority, without the joinder or consent of any party, to make any amendment of this Declaration necessary to clarify any apparently conflicting provisions thereof and /or to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors.

Any change, modification or rescission, whether accomplished under any one or more of the provision of the preceding paragraphs, shall be effective upon recording of such instrument in the Office of the County Clerk of Harris County, Texas; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provision of the Act.

Section 9.2 Abandonment or Termination. Except for abandonment or termination as provide for herein by Section 7.5 and 8.3 in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain, the condominium regime established hereby shall not be abandoned or terminated without consent of all Unit Owners and all Mortgagees.

Section 9.3 Notices. Notices provided in the Act, this Declaration or the Bylaws shall be in writing, and shall be addressed the Association, to the Board, or to any Unit Owners as the case may be, at 18617 Egret Bay Boulevard, Houston, Texas 77058, or at such other address as hereinafter provided. The Association or Board may designate a different address or addresses for notices to them respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may designate a different address for notice to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered when mailed by United States mail with postage prepaid, or when delivered in person.

Upon written request to the Board, the holder of any recorded Mortgage encumbering any Unit shall be given a copy of all notice permitted or required by this Declaration to be given to the Owner or Owners whose Unit is subject to such mortgage.

## ARTICLE X

### MISCELLANEOUS

Section 10.1 General Reservations. It is the intent of Declarant to develop the condominium regime established hereunder in two (2) phases. "Phase I" shall be completed upon the filing of this Declaration, shall contain seventy six (76) Units and shall be situated on the land described in Exhibit A-1. If added by Declarant as part of the condominium regime established hereunder, "Phase II" shall contain approximately eight three (83) Units and shall be situated on the property so designated in Exhibit A-2. Declarant shall not be obligated to develop Phase II. If phase II is not developed, no Unit Owner shall have any interest whatsoever in the lands described in Exhibit A-2.

Declarant hereby reserves the right at any time hereafter, prior to the expiration of seven (7) years from the date of recordation of this Declaration; upon notice to existing Mortgagees of Record holding a first lien Deed of Trust on any Mortgagee, to record an amendment to this Declaration to properly reflect the addition of Units in Phase II. Upon recording of the above described amendment, the land described in Exhibit A-2 shall become subject to the provisions of this Declaration without the necessity of amending individual sections of any other portions of this Declaration to reflect such addition.

If Phase II is added, the undivided interest in the Common Elements appurtenant to Units in Phase I and Phase II shall be in accordance with Section 2.6 (a) hereof and the amendment to this Declaration which adds Phase II to the Condominium Regime established herein. Any such adjustments in the interests in the Common Elements and the value adjustments in the interest in the Common Elements and the value of the votes assigned to Units based upon the interest in the Common Elements shall become effective as to all Units in Phase I and Phase II when the amendment to this Declaration which adds the Units in Phase II to the Property is recorded.

By acceptance of a deed to any Unit, each Unit Owner hereby expressly grants to Declarant the irrevocable right and power to perform such acts as may be necessary (i) to add, at Declarant's sole discretion, Phase II to the condominium regime established by this Declaration (ii) to construct all Buildings, Common Elements, Limited Common Elements, and any other improvements which may constitute a part of Phase II, and (iii) to develop and sell Units in Phase II. All cost of development of Phase II shall be borne by and directly paid by Declarant until such time as assessments shall begin to accrue.

For the sole purpose of amending this Declaration to add Phase II to the condominium regime, each Unit Owner, by acceptance of a Deed to any Unit, expressly and intentionally waives all rights under Section 7 (d) of the Condominium Act (Article 1301a, Vernon's Texas Civil Statutes, as amended) which provides as follows:

“(D) After a condominium declaration is recorded with a country clerk, the declaration may not be amended except at a meeting of the Unit owners at which the amendment is approved by holders of at least sixty-seven percent (67%) of the ownership interest in the continuums.”

By acceptance of a deed to any Unit, each Unit Owner irrevocably appoints the Declarant attorney-in-fact for the Association, Board and Unit Owners for the sole purpose only of amending this Declaration to add Phase II to the condominium regime, and to execute, acknowledge and deliver such amendment to this Declaration and all other instruments which may be necessary or required to evidence the addition of Phase II to the condominium regime; such power of attorney shall be coupled with an interest so long as Declarant shall own a Unit in the condominium created hereby.

Declarant does not warrant, represent or guarantee that Phase II will be developed, or if developed, will be added to the condominium regime established under this Declaration. By acceptance of a deed to a Unit, each Unit Owner agrees that in purchasing his Unit he has not relied on the addition of Phase II, and that he expressly recognized the absolute discretion to Declarant to add or not to add Phase II.

Declarant reserves an easement and the right of ingress and egress into and over those portions of the Common Elements and the Limited Common Elements which are reasonably necessary to Declarant for the construction of additional Buildings and Units or the improvement of the Property, including the development and addition of Phase II, and Declarant further reserves the right to establish easements,

reservations, exceptions and exclusions consistent with the ownership of the Property and for the best interest of the Owners and the Association in order to serve the entire Property, including Phase II if developed and added to the Property.

Section 10.2 Estoppel Certificate. Any Mortgage and any prospective purchaser of a Unit shall be entitled upon written request therefor to a statement from the board setting forth the amount of any unpaid Common Expense Charges of Special Assessments not paid by the Unit Owner of the Unit in which such prospective purchasers or mortgagee has in interest. Any prospective purchaser shall not be liable for nor shall the Unit conveyed be subject to the lien provided for in this Declaration for any unpaid Common Expense Charges or Special Assessments made by the Board against the particular Unit involved in excess of the Board against the particular Unit involved in excess of the amount set forth in such statement. Any such purchaser shall, however, be liable for any assessments of Common Expense Charges and Special Assessments becoming due after the date of any such statement.

Section 10.3 Remedies. In the event of any violation of the provision of the Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws or the rules and regulation of the Board or Association by any Unit Owner, (either by his own conduct or by the conduct of any Occupant of his Unit) the Association, or its successors or assigns or the Board, or its agent, or any aggrieved Unit Owner shall have each and all of the rights and remedies which may be provided for in the Act, this Declaration, the Bylaws, or said rules and regulations, or which may be available at law or in equity and may prosecute an action or other proceeding against such defaulting Unit Owner and/or others for enforcement of any lien and by the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages liquidated or otherwise, together with interest thereon at the maximum lawful rate per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his prospective share of the Common Expense Charges, and the Boards shall have a lien for all of the same, as well as for non-payment of his other Common Expense Charges and Special Assessments, upon the Unit and ownership interest in the Common Elements of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere in the Property; provided, however that such lien shall be subordinate to the lien of a prior recorded first Mortgage on the interest of such Unit Owner, except in the amount of the proportionate share of said Common Expenses which become due and payable from after the date on which the said Mortgage owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or files suit or commences other proceedings to foreclose its Mortgage or causes a receiver to be appointed. This paragraph shall not be amended, changed, modified or rescinded without the prior consent of all holder of record or Mortgagees against Units. In the event any such default by any Unit Owner is not cured within thirty (30) days after the default occurred, the Board and /or the Managing Agent is hereby authorized a shall promptly notify the holder of any recorded Mortgage encumbering the defaulting Owner's Unit of the default.

Additionally, in the event of any such default by a Unit Owner, the Board and the Managing Agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purposes and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

The violation of any restriction or condition or regulation adopted by the Board or the breach of any covenant or provision herein contained, shall give the board the rights, in addition to any other rights provided for in this Declaration (i) to enter upon the Unit, or any portion of the Property upon which, or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provision hereof, and the Board, or its employees or agents shall not hereby be deemed guilty by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or (iii) to take possession of such Unit Owner's Unit and interest in the Property and to maintain an action for possession of such Unit and interest in the manner provided by law.

Section 10.4 Severability. If any provision of this Declaration or the Bylaws, any section, sentence, clause, phrase, word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the Bylaws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration or the Bylaws shall be construed as if such invalid part was never included therein.

Section 10.5 Perpetuities and Restraints or Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the president of the United States, Ronald Reagan, and the Governor of Texas, Mark White.

Section 10.6 Rights and Obligations. Each grantee of the Declarant, by the acceptance of the deed of conveyance from the Declarant, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges or every character hereby imposed shall be deemed taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.