

DECLARATION

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CONDOMINIUM DECLARATION

for

BRIARWEST TOWNHOUSES

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, J. L. Philips, Inc. , a Texas corporation, hereinafter called "Declarant, " is the owner of real property situated in the County of Harris, State of Texas, being described as follows, to-wit:

All of that certain tract of 13 acres of land out of the John D. Taylor Survey, out of Block 7, Abstract 72, in Harris County, Texas, said tract known and designated as 2300 Winrock Apartments, according to the map or plat thereof recorded in Volume 176 , Page 10 of the Map Records of Harris County, Texas,

which property is described on the attached map or plat thereof marked Exhibit "A" which by this reference is made a part hereof; and

WHEREAS, Declarant, as Developer desires to establish a condominium regime under the Condominium Act of the State of Texas; and

WHEREAS, Declarant has executed plans for the construction of twenty-eight two-story buildings and other improvements appurtenant thereto on the property described in said Exhibit "A" which when completed shall consist of one hundred ninety-four separately designated condominium units; and

WHEREAS, Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the area or space contained in each of the apartment units in the twenty-eight building improvements and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property which is hereinafter defined and referred to as the general common elements;

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its successors and assigns and any

person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, and assigns.

1. DEFINITIONS, unless the context shall expressly provide otherwise.

- (a) "Apartment" or "apartment unit" means an individual air space unit which is contained within the perimeter walls, floors, and ceilings of a building as shown on the map.
- (b) "Condominium unit" means one individual air space unit together with the interest in the general common elements appurtenant to such unit.
- (c) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more condominium units.
- (d) "General Common Elements" means and includes:
 - (1) The land on which the buildings are located;
 - (2) The foundations, columns, girders, beams, supports, main walls, and roofs;
 - (3) The yards, gardens, parking areas, fences, storage spaces, streets, service drives, walks, service easements, recreation area and Clubhouse;
 - (4) The installations consisting of the equipment and materials making up central services such as power, light, gas, clubhouse, swimming pool, and the like;
 - (5) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.
- (e) "Limited Common Elements" means a part of the general common elements reserved for the exclusive use of the owner of a condominium unit; garage parking areas, attic spaces directly above unit, and patio areas indicated on map as

appurtenant limited elements to a specific unit only shall be deemed limited common elements.

- (f) "Entire Premises" or "property" means and includes the land, the buildings, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.
- (g) "Common Expenses" means and includes:
 - (1) All sums lawfully assessed against the general common elements by the Managing Agent or Board of Managers;
 - (2) Expenses of administration and management, maintenance, repair or replacement of the general common elements;
 - (3) Expenses agreed upon as common expenses by the owners; and
 - (4) Expenses declared common expenses by provisions of this Declaration and by the By-Laws.
- (h) "Association of Unit Owners" or "association" means a Texas non-profit association, the By-Laws of which shall govern the administration of this condominium property, the members of which shall be all of the owners of the condominium units.
- (i) "Map", "survey map" or "plans" means and includes the engineering survey of the land locating thereon all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements, same being herewith filed, consisting of 29 sheets labeled Exhibits "a" through "z", inclusive and Exhibits "AA", "AB" and "AC", and incorporated herein.

2. The map shall be filed for record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any condominium unit. Such map shall consist of and set forth (1) the legal description of the surface of the land; (2) the linear measurements and location, with reference to the exterior boundaries of the land, of the buildings and all their improvements built or to be built on said land by Declarant; (3) floor plans and elevation plans of the building built or to be built thereon showing the location, the building designation, the

apartment designation and the linear dimensions of each apartment unit, and the limited common elements; (4) the elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane.

3. The real property is hereby divided into the following separate fee simple estates:

- (a) One hundred ninety-four fee simple estates consisting of one hundred ninety-four separately designated apartment units, each such unit identified by number and by building symbol or designation on the map, the apartments in each building being described as follows:

BUILDING A - Containing Eight (8) apartments, numbered A-1 through A-8, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "A" hereto attached marked "Exhibit B".

BUILDING B - Containing Seven (7) apartments numbered B-9 through B-15, inclusive, the size, dimensions, locations and boundaries of each being detailed on the survey plat of Building "B" hereto attached, marked "Exhibit C".

BUILDING C - Containing Seven (7) apartments, numbered C-16 through C-22, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "C" hereto attached marked "Exhibit D".

BUILDING D - Containing Seven (7) apartments, numbered D-23 through D-29, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "D" hereto attached marked "Exhibit E".

BUILDING E - Containing Eight (8) apartments, numbered E-30 through E-37, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "E" hereto attached marked "Exhibit F".

BUILDING F - Containing Eight (8) apartments, numbered F-38 through F-45, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "F" hereto attached marked "Exhibit G".

BUILDING G - Containing Five (5) apartments, numbered G-46 through G-50, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "G" hereto attached marked "Exhibit H".

BUILDING H - Containing Five (5) apartments, numbered H-51 through H-55, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "H" hereto attached marked "Exhibit III".

BUILDING I - Containing Five (5) apartments, numbered I-56 through I-60, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "I" hereto attached marked "Exhibit K".

BUILDING J - Containing Five (5) apartments, numbered J-61 through J-65, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "J" hereto attached and marked "Exhibit K".

BUILDING K - Containing Five (5) apartments, numbered K-66 through K-70, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "K" hereto attached marked "Exhibit L".

BUILDING L - Containing Five (5) apartments, numbered L-71 through L-75, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "L" hereto attached marked "Exhibit M".

BUILDING M - Containing Eight (8) apartments, numbered M-76 through M-83, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "M" hereto attached marked "Exhibit N".

BUILDING N - Containing Eight (8) apartments, numbered N-84 through N-91, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "N" hereto attached marked "Exhibit O".

BUILDING O - Containing Eight (8) apartments, numbered O-92 through O-99, inclusive, the size, dimensions, location and

boundaries of each being detailed on the survey plat of Building "O" hereto attached marked "Exhibit P".

BUILDING P - Containing Seven (7) apartments, numbered P-100 through P-106, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "P" hereto attached marked "Exhibit Q".

BUILDING Q - Containing Seven (7) apartments, numbered Q-107 through Q-113, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "Q" hereto attached marked "Exhibit R".

BUILDING R - Containing Eight (8) apartments, numbered R-114 through R-121, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "R" hereto attached marked "Exhibit S".

BUILDING S - Containing Seven (7) apartments, numbered S-122 through S-128, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "S" hereto attached marked "Exhibit T".

BUILDING T - Containing Seven (7) apartments, numbered T-129 through T-135, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "T" hereto attached marked "Exhibit U".

BUILDING U - Containing Six (6) apartments, numbered U-136 through U-141, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "U" hereto attached marked "Exhibit VI".

BUILDING V - Containing Seven (7) apartments, numbered V-142 through V-148, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "V" hereto attached marked "Exhibit VII".

BUILDING W - Containing Six (6) apartments, numbered W-149 through W-154, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "W" hereto attached marked "Exhibit VIII".

BUILDING X - Containing Six (6) apartments, numbered X-155 through X-160, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "X" hereto attached marked "Exhibit Y".

BUILDING Y - Containing Seven (7) apartments, numbered Y-161 through Y-167, inclusive, the size, dimension, location and boundaries of each being detailed on the survey plat of Building "Y" hereto attached marked "Exhibit Z".

BUILDING Z - Containing Nine (9) apartments, numbered Z-168 through Z-176, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "Z" hereto attached marked "Exhibit AA".

BUILDING AA - Containing Nine (9) apartments, numbered AA-177 through AA-185, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "AA" hereto attached marked "Exhibit AB".

BUILDING AB - Containing Nine (9) apartments, numbered AB-186 through AB-194, inclusive, the size, dimensions, location and boundaries of each being detailed on the survey plat of Building "AB" hereto attached marked "Exhibit AC".

- (b) The remaining portion of the entire premises, referred to as the general common elements, which shall be held in common by the owners, each such interest being an undivided one hundred ninety-fourth of the general common elements, and each such undivided interest being appurtenant to one of the one hundred ninety-four apartment units.

4. A portion of the general common elements is set aside and reserved for the exclusive use of individual owners, such areas being the limited common elements. The limited common elements reserved for the exclusive use of the individual owners are the automobile parking spaces, storage spaces, breezeway spaces and patio spaces, which are shown on the map and attic spaces directly over unit. Such spaces are allocated and assigned by the Declarant to the respective condominium units as indicated on Exhibits "B" through "Z", inclusive, and Exhibits "AA", "AB" and "AC" hereto attached, the patio assigned to each apartment unit being designated by the apartment unit number preceded by the prefix "P" and in like manner, the garage and breezeway spaces assigned to each apartment

unit being designated by the apartment unit number preceded by the prefix "G". Such limited common elements shall be used in connection with the particular apartment unit, to the exclusion of the use thereof by the other owners except by invitation. A portion of the common area is intended as a recreation area, and will be improved with a swimming pool, clubhouse, and other recreational facilities. Reasonable regulations governing the use of said recreational facilities by owners and by their guests and invitees shall be promulgated by the Declarant, and by the Board of Managers after the same has been elected and by Managing Agent. Such regulations shall be permanently posted at the clubhouse and/or elsewhere in said recreational area, and all owners shall be furnished with a copy thereof. Each owner shall be required strictly to comply with said Rules and Regulations, and shall be responsible to the Board of Managers for the compliance therewith by members of his or her family, relatives, guests and invitees, both minor and adult.

5. Each apartment and the undivided one hundred ninety-fourth interest in and to the general common elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit.

6. Every deed, lease, mortgage, trust deed or other instrument may legally describe a condominium unit by its identifying apartment number and building symbol or designation as shown on the map, followed by the words "Briarwest Townhouses" and by a reference to this recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the general common elements.

7. Declarant shall give written notice to the assessor of the creation of condominium ownership of this property, as is provided by law, so that each apartment unit and its percentage of undivided interest in the general common elements shall be deemed a separate parcel and subject to separate assessment and taxation.

8. A condominium unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.

9. The general common elements shall be owned in common by all of the owners of the apartment units and shall remain undivided, and no owner shall bring any action for partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the

right of partition of a condominium unit between the owner, thereof, but such partition shall not affect any other condominium unit.

10. Each owner shall be entitled to exclusive ownership and possession of his apartment. Each owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

11. Each apartment shall be occupied and used by the owner only as and for a single family residential dwelling for the owner, his family, his social guests or his tenants.

12. If any portion of the general common elements encroaches upon an apartment unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of an adjoining apartment unit or units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements or the apartment units.

13. Subsequent to the completion of the improvements described on the map, no labor performed or materials furnished and incorporated in an apartment unit with the consent or at the request of the owner thereof or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the general common elements owned by such other owners. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the apartment unit of any other owner or against the general common elements for construction performed or for labor, materials, services or other products incorporated in the owner's apartment unit at such owner's request.

14. The administration of this condominium property shall be governed by By-Laws of Briarwest Townhouse Condominium Association, a non-profit association, hereinafter referred to as the "Association". A copy of "By-Laws" is hereto attached marked Exhibit "A1" and incorporated herein; and same shall be deemed adopted by Declarant as sale owner of the property herein described, and all owners shall be bound thereby. Declarant may, at its election, cause to be formed a Texas non-profit corporation bearing said name, in which event such non-profit corporation shall be composed of owners of condominium units as herein set out, and such non-profit corporation shall thereafter act and do all things to be done

by "Association", and the said non-profit corporation, if formed, shall be bound by, adopt and observe as its By-Laws the By-Laws hereto attached marked "Exhibit A1". "Association" as here used shall refer to the member owners as a group, both before and after incorporation.

In the event of incorporation, a certified copy of the Certificate of Incorporation of Briarwest Townhouse Condominium Association shall be recorded and which shall provide that three persons shall act as a Board of Managers and shall serve as the Managers until their successors have been elected and qualified. An owner of a condominium unit, upon becoming an owner, shall be a member of the Association and shall remain a member for the period of his ownership. The Managing Agent shall be J. L. Philips, Inc. , a Texas corporation, whose address is 6456 Burgoyne, Houston, Texas, and the Managing Agent shall perform all of the duties of the Board of Managers until December 7, 1973, or until 95% of apartment units shall be sold to owner/ occupants, whichever first occurs. The Clubhouse, a part of the common elements will not be available to owners for their use until such time as the owners become the Managing Agent.

15. The owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each apartment unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the general or limited common elements or to another apartment unit or units.

16. An owner shall maintain and keep in repair the interior of his own apartment, including the fixtures thereof. All fixtures and equipment, with the heating and air conditioning system, installed within the apartment unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the apartment unit shall be maintained and kept in repair by the owner thereof. Without limitation on the generality of the foregoing, an owner shall maintain and keep in good repair (and replace, if so required) the air conditioning compressor, hot water heater unit, fans, duct work, heating unit and cooling coils, utilized in and for his unit; as well as all other fixtures situated within or installed into the limited common elements appurtenant to such unit; and an owner shall be obliged to promptly repair and replace any broken or cracked windows, doors, or glass therein that might be so broken or cracked.

17. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. No owner shall in any way alter, modify, add to, or otherwise perform any work whatever upon any of the common elements, save with written consent of the Board of Managers first obtained.

18. An owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his apartment unit, nor shall such owner be deemed to own the utilities running through his apartment unit which are utilized for, or serve more than one apartment unit, except as a tenant in common with the other owners. An owner, however, shall be deemed to own and shall maintain the inner decorated and/or finished surfaces of the perimeter and interior walls, floors, and ceilings, doors, windows, and other such elements consisting of paint, wallpaper, and other such finishing materials.

19. Each owner shall comply strictly with the provisions of this Declaration, the By-Laws, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Managing Agent of Board of Managers on behalf of the owners, or, in proper case, by an aggrieved owner.

20. This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing an aggregate ownership interest of one hundred seventy-five condominium units, or more, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all condominium units unanimously consent and agree to such revocation or amendment by instruments) duly recorded, the making of physical changes in the interior of an apartment or apartments coming into the possession of a mortgagee by virtue of foreclosure of any first mortgage; and physical changes to and alterations of the apartment or apartments owned by virtue of foreclosure of any first mortgage may be made without the consent of the other owners or mortgagees and this declaration may be amended without other owners' or mortgagee' consent, by the owner acquiring same by such foreclosure, to correspond with such physical changes; provided, However, that the percentage of the undivided interest of each unit owner in the general common elements as expressed in this Declaration shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded.

21. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent or Board of Managers of the Association shall from time to time determine is to be paid by all of the owners, (including Declarant, after December 7, 1973 on units not sold), to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the general common elements, which sum may include, among other things, cost of management, taxes, assessments, fire insurance with extended coverage and vandalism and malicious mischief with endorsements attached, issued in the amount of the maximum replacement value of all of the condominium units, casualty and public liability and other insurance premiums, landscaping and care of grounds, common righting, repairs and renovations, garbage collections, wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent or Board of Managers under or by reason of this Declaration, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus funds as well as other costs and expenses relating to the general common elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification, or a release of the owners from the obligation to pay.

The Managing Agent or Board of Managers shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and including for such other risks, of a similar or dissimilar nature, 46 are or shall hereafter customarily be covered with respect to other apartment or condominium buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. The insurance shall be carried in Blanket policy form naming the Association the insured, which policy or policies shall identify the interest of each condominium unit owner and which shall provide for a standard, non-contributory mortgagee clause in favor of each first mortgagee. It shall also provide that it cannot be canceled by either the insured or the insurance company until after ten days prior written notice to each first mortgagee. Said Managing Agent or Board of Managers shall, upon request of any first mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagor. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event,

whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy, as to the interests of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

22. All owners shall be obligated to pay the estimated assessments imposed by the Board of Managers or Managing Agent of the Association to meet the common expenses. Except for insurance premiums, the assessments shall be made pro rata according to each owner's percentage interest in and to the general common elements. Assessments for insurance premiums shall be based upon that proportion of the total premium(s) that the insurance carried on a condominium unit bears to total coverage. Assessments for the estimated common expenses, including insurance, shall be due monthly in advance on or before the fifth day of each month. Failure to pay by the fifteenth day of each month shall require the imposition and assessment of a late charge of \$5.00.

Contribution for monthly assessments shall be prorated if the ownership of a condominium unit commences on a day other than on the first day of a month.

23. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the general or common elements, or by abandonment of his apartment.

24. All sums assessed but unpaid for the share of common expenses chargeable to any condominium unit, including interest thereon at eight per cent per annum, shall constitute a lien on such unit superior (prior) to all other liens and encumbrances, except only for:

- (a) Tax and special assessment liens in favor of any assessing unit, and
- (b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such a lien.

To evidence such lien the Board of Managers or Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice

shall be signed by one of the Board of Managers or by the Managing Agent and may be recorded in office of the Clerk and Recorder of Harris County, Texas. Such lien for the common expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's condominium unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The owner shall also be required to pay to the Association a reasonable rental for the condominium unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid in the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the common expenses assessed against each condominium unit shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a condominium unit may pay any unpaid common expense payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

25. Upon the written request of any owner or any encumbrancer or prospective encumbrancer of a condominium unit, the Association, by its Managing Agent or Board of Managers, shall issue a written statement setting forth the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance.

without prejudice to the Grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon written request, any such prospective grantee shall be entitled to a statement from the Managing Agent or Board of Managers, setting forth the amount of the unpaid assessments, if any, with respect to the subject unit, the amount of the currently monthly assessment and the date that such assessment becomes due. credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten days of such request, then such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the subject unit.

26. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a condominium unit may create a second mortgage on the following conditions:

- (1) That any such second mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other payments created by this Declaration and by the By-Laws;
- (2) That the mortgagee under any second mortgage shall release, for the purpose of restoration of any improvements upon the mortgage premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were affected and placed upon the mortgage premises by the Association. Such release shall be furnished forthwith by a second mortgagee upon written request to the Association.

27. In the event any owner of a condominium unit shall wish to sell, lease or rent the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining owners shall be given written notice thereof together with an executed copy of such offer and the terms thereof. Such notice and copy shall be given to the Board of Managers for all of the owners. The remaining owners through the Board of Managers, or a person named by them, shall have the right to purchase or lease or rent the subject apartment upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching

down payment or deposit is provided to the selling or leasing owner during the ten-day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any owner shall attempt to sell, rent, or lease his condominium unit without affording to the other owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee. Possession of or residence in a condominium unit by any other person than the record owners, their lineal descendants or lineal descendant relatives, continuing for a period of ten (10) days, shall be deemed, for this purpose, to constitute a leasing or renting of the condominium unit, whether or not any consideration has been paid therefor; and in such event, the Board of Managers may require the removal of such occupants), it being hereby agreed that the Board of Managers, in event of the possession of the condominium unit upon demand therefor of and from such occupant, with or without notice to the record owner(s) thereof; and in the event of failure to surrender such possession, the Board of Managers may institute its action in starting Forcible Entry and Detainer Proceedings for the possession of such unit, and have and retain such possession until the record owner thereof, or his purchaser (in event of sale, all prerequisites of this plaintiff having been complied with) retakes physical possession of such premises. During any time when the Board of Managers shall have possession of such unit hereunder the record owner and all his guests, licensees and invitees, shall be deemed to waive any claim for damages to person or property in or on the unit.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an owner to subject his interest in the project parcel to a trust deed, mortgage, or other security instrument.

The failure of or refusal by the Board of Managers to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner received any subsequent bona fide offer from a prospective purchaser or tenant.

The provisions of this Article 27 shall not apply to any sale, lease or rental if made by Declarant at any time hereafter whether same be a "first

sale or letting" or "resale or reletting" of an apartment unit. Declarant shall have the further right to use any seven apartment units as office and sales area and display advertising signs at the premises at any time hereafter until 194 units have been sold by Declarant.

The right of first refusal, as provided herein, shall extend and run for the period of the lives of the now living children of Robert F. Kennedy, formerly Attorney General of the United States, and the now living children of Bob Casey, M.C., whichever of said children shall live the longer, plus the period of twenty-one years from the date of execution of this Declaration.

Except as is otherwise provided in Paragraph 28, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each grantor of a condominium unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" as provided in this paragraph.

28. In the event of any default on the part of any owner under any first mortgage which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgage in lieu of such foreclosure, shall be made free and clear of the provisions of Paragraph 27, and the purchaser (or grantee under such deed in lieu of foreclosure) of such condominium unit shall be thereupon and thereafter subject to the provisions of this Declaration and By-Laws. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the condominium unit free and clear of the provisions of Paragraph 27, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of Paragraph 27.

If an owner of a condominium unit can establish to the satisfaction of the Managing Agent or Board of Managers that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Paragraph 27.

29. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium unit, the Managing Agent or Board of Managers of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

- (a) With respect to a proposed lease or sale under Paragraph 27, that proper notice was given by the selling or leasing owner and that the remaining owners did not elect to exercise their option to purchase or lease;
- (b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or its nominee, pursuant to Paragraph 28, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 27;
- (c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer in not or will not be subject to the provisions of Paragraph 27;

Such a certificate shall be conclusive evidence of the facts contained therein.

30. This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescence.

Title to any condominium unit is declared an expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Briarwest Townhouse Condominium Association, a non-profit association, or its successor non-profit corporation, if same be hereafter organized, their true and lawful attorney in their name, place, and stead, for the purpose of dealing with the property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium unit owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same

conditions in which it existed prior to the damage, with each unit and the general and limited common elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements unless the owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

- (a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall be promptly repaired and reconstructed.
- (b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than fifty per cent of all of the general common elements, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense made pro rata according to each owner's percentage interest in and to the general common elements and shall be due and payable within thirty days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 24. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, in following order:
 - (1) For payment of the balance of the lien of any first mortgage;

- (2) For payment of taxes and special assessments liens in favor of any assessing entity;
 - (3) For payment of unpaid common expenses;
 - (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
 - (5) The balance remaining, if any, shall be paid to the condominium unit owner.
- (c) If more than fifty percent of all of the general common elements, not including land, are destroyed or damaged, and if the owners representing an aggregate ownership interest of one hundred seventy-five condominium units, or more, do not voluntarily, within one hundred days thereafter, make provision for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire remaining premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into one hundred ninety-four separate accounts, each such account representing one of the condominium units. Each such account shall be in the name of the Association, and shall be further identified by the number of the apartment unit and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any account to another, toward the full payment of the lien of any first mortgage against the condominium unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire property, Such apportionment shall be based upon each condominium unit owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution

from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b) (1) through (5) of this paragraph.

If the owners representing an aggregate ownership interest of one hundred seventy-five condominium units, or more, adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan but not sooner than thirty days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 24. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (b) (1) through (5) of this paragraph.

- (d) The owners representing an aggregate ownership interest of one hundred eighty-five condominium units or more, may agree that the general common elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the owners as common expenses; provided, however, that any owner not agreeing to such renewal or reconstruction may give written notice to the Association that such unit shall be purchased by the Association, for the fair market value thereof. If such owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within

thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "Commencing Date" from which all periods of time mentioned herein shall be measured. Within ten days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party), the appraiser who shall be a member of the Houston Real Estate Board. If either party fails to make such a nomination, the appraiser nominated shall within five days after default by the other party appoint and associate with him another appraiser (to be selected from the Houston Real Estate Board). If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser (to be selected from the Houston Real Estate Board) to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two persons (each of whom shall be a member of the Houston Real Estate Board, and from the names of the four persons so nominated shall be drawn by lot by any judge of any court of record in Texas, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days the failure of the two appraisers to agree, which in any event shall not be later than twenty days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value or in the case of their disagreement, the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the owners. The sale shall be consummated within fifteen days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraph (b) (1) through (5) of this paragraph.

- (e) The owner s representing an aggregate ownership interest of one hundred eighty-five condominium units, or more, may agree that the general common elements of the property are obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire premises shall be sold by the Association, as attorney-in-fact, for all of the

owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into one hundred ninety-four separate accounts, each such account representing one condominium unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the apartment and the name of the owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of this paragraph.

31. Upon date defined in paragraph 14 herein, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the entire promises and furnished by Declarant, which property is intended for the common use and enjoyment of the condominium units owners and occupants. The Association shall hold title to such property, for the use and enjoyment of the condominium units owners and occupants. No owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the owner's termination of possession of his condominium unit.

32. All notices, demands or other notices intended to be served upon an owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such owner in care of the apartment number and building address of such owner. -All notices, demands or other notices intended to be served upon the Managing Agent, J. L. Phillips, Inc., or the Board of Managers of the Association or the Association shall be sent by ordinary or certified mail, postage prepaid, to 6456 Burgoyne, Houston, Texas, until such address is changed by a notice of address change duly recorded.

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

34. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Texas and to all other provisions of law.

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

IN WITNESS WHEREOF, Declarant, by its corporate officers, has duly executed this Declaration this 9th day of February, 1972.

J. L. PHILIPS, INC.

By /s/ J. L. Philips

ATTEST:

/s/ John R. Blackmon
Assistant Secretary