

**DECLARATION OF UNIT OWNERSHIP ESTATE
OF POINTE MARIN TOWN HOMES PHASE II
DELAWARE COUNTY, OKLAHOMA**

This Declaration is made as of this 30th day of January, 2008 by, Island Developers, L.L.C., an Oklahoma Limited Liability Company ("Declarant"), with reference to the following:

1. Declarant is the owner of certain real property (the "Land") located in Delaware County, Oklahoma more particularly described as follows:

**All that part of Lots 205R-208R of 1st Replat of Pointe Marin
at Shangri-La Resort a subdivision in Delaware County,
Oklahoma more particularly shown on Exhibit "A".**

2. Declarant desires and intends to sell and convey interests in the Land and Improvements to various persons subject to the protective restrictions, conditions, covenants, reservations, liens and charges set forth in this Declaration, and for this purpose, desires to submit the Land and Improvements to the provisions of the Oklahoma Unit Ownership Estate Act, 60 Okla. Stat. Section 501 et seq.

NOW THEREFORE, Declarant hereby declares that all the Land and Improvements are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, reservations, liens, and charges, all of which are hereby declared and established and agreed to be in furtherance of a general plan and scheme for the sale of Unit Ownership Estates, as defined in 60 Okla. Stat. Section 503 (g), and all of which are declared, and established for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Land and Improvements. All of said limitations, covenants, reservations, liens, charges, and restrictions are hereby established and imposed upon the Land and Improvements for the benefit thereof and for the benefit of each and every individual unit hereinafter described and of each owner of one or more units, as that term is hereinafter defined, and the owners of any interest of any kind or character in the Land or Improvements, or any portion thereof.

**Article I
Definitions**

Whenever used in this Declaration the following terms shall have the following meanings:

1. **Articles.** "Articles" shall mean the duly adopted Certificate of Incorporation of the Association, as the same may be amended from time to time, a copy of which is attached hereto as a Part of Exhibit "B".



2. Association. "Association" shall mean and refer to Pointe Marin Town Homes Phase II Homeowners' Association, Inc, an Oklahoma non-profit corporation.

3. By-Laws. "By-Laws" shall mean the duly adopted By-Laws of the Association, a copy of which is attached hereto as a part of Exhibit "B" and made a part hereof, as the same may be amended, changed and modified from time to time.

4. Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

5. Building. "Building" shall mean one or more of the buildings or structures located on the Property, more particularly shown on the building plans attached hereto and made a part hereof.

6. Common Elements. "Common Elements" means the following elements of the Property:

- (a) The Land.
- (a) The foundations, columns, girders, beams, supports, main supporting walls, roofs, fireplaces and front entrances and exits of the buildings.
- (b) The yards, gardens, masonry walls, stairwells and access to parking areas or garages.
- (c) Installations of central services including power, common lighting, gas, irrigation, water service up to its connection of each unit and utilities servicing common elements.
- (d) All other parts of the property necessary or convenient to its existence, maintenance or safety or normally in common use.

All roadways and entrances have been dedicated under the Deed of Dedication, Declaration and Restrictive Covenants of Pointe Marin of Shangri-La Resort (the "subdivision Declaration") recorded on April 20, 2004 in Book 1603 at Pages 581-609 which is incorporated by reference. The owners of any property within Pointe Marin at Shangri-La Resort have the right to use the roadways and will remain jointly responsible for maintenance of those roadways as more fully set forth in the "Subdivision Declaration" and all Amendments of record.

7. Common Expenses. "Common Expenses" means the following:

- (a) Expenses of administration, maintenance, repair or replacement of Common Elements and Limited Common Elements to the extent such expenses are to be borne by the Association.

- (b) Amounts deposited in the Reserve Fund for maintenance, repair, and replacement of the Common Elements, as required by Section 6 of Article XV of the Declaration.
 - (c) Expenses agreed upon as common by all Unit Owners acting through the Association.
 - (d) Expenses declared common by the provisions of the Oklahoma Unit Ownership Estate Act, this Declaration or by the By-Laws.
8. Declarant. "Declarant" means Island Developers, L.L.C., an Oklahoma Limited Liability Company, its successors and assigns.
9. Declarant Control Period. "Declarant Control Period" means the period ending on the earlier of: (1) the fifth anniversary date of recordation of the Declaration, or (2) upon the sale of 90% of units subject to the Declaration from time to time.
10. Declaration. "Declaration" means this instrument, by which the Property is submitted to the provisions of the Oklahoma Unit Ownership Estate Act, together with such amendments to this instrument as may hereafter from time to time be lawfully made.
11. Limited Common Elements. "Limited Common Elements" means those parts of the Common Elements reserved for use by the Owner or Owners of a certain unit or certain units, to the exclusion of the Owners of the other Units, as provided in this Declaration or as agreed upon by all unit Owners and including but not limited to those elements described in Article V hereof.
12. Person. "Person" means an individual, corporation, partnership, association, trust or other legal entity, or any combination thereof.
13. Property. "Property" means and includes the Land, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto, together with all personal property intended for use in connection therewith which has been or intended to be submitted to the provisions of the Oklahoma Unit Ownership Estate Act.
14. Unit Designation. "Unit Designation" means the number designating each particular Unit and Garage Unit, as set forth in the description of units attached hereto as Exhibit "C" and made a part hereof.
15. Unit Owner. "Unit Owner" or "Owner" means a "person owning a Unit within a building and the appurtenant Garage Unit".

16. Unit. Unit means an enclosed part of the property intended for use as a residence, with direct access to a common area, including the several rooms and enclosed spaces therein, as shown on attached building plans attached as Exhibit "D" and made a part hereof, but excluding all supporting walls, ceilings, floors, fireplaces and other structures thereon and including the appurtenant Garage Unit.

Article II Descriptions of Buildings

The unit designations and a particular description of each unit subject hereto are contained in the short description of units attached hereto and made a part hereof. Each unit owner shall have a right of ingress or egress to his or her Unit and Garage Unit, which right shall be appurtenant to the ownership of the unit and shall be perpetual.

Attached hereto as "A-1" is a site plan showing the specific location of the Units and Garage Units as well as the Common Area to be utilized for ingress, egress and parking. The area designated as Commons 4 shall be for the exclusive benefit of the Units described in this Declaration. The Association shall have the right to designate the specific location of parking spaces within Commons 4.

Article III Declaration of Pointe Marin at Shangri-La Resort and Declaration of Unit Ownership Estate of Pointe Marin Town Homes

All of the Land is part of Pointe Marin at Shangri-La Resort as shown in the original Plat and the "Subdivision Declaration" and the Amended Plat on file herein. Notwithstanding the filing of this Declaration creating unit ownership estate, all of said property shall remain subject to the Plat, Declaration and Restrictive Covenants set forth in those documents. Unit owners shall also remain responsible for payment of any dues assessed by the Pointe Marin at Shangri-La Resort Homeowners' Association.

Garage Units 2051A, 2052A, 2061A and 2062A are located upon a portion of Lot 204r of Pointe Marin at Shangri-La Resort which is subject to the Declaration of Unit Ownership Estate of Pointe Marin Town Homes. Declarant is in the process of gaining approval of and recording the 2nd Replat of Pointe Marin at Shangri-la Resort which will redefine the location of the dividing line between Lots 204r and 205r as shown in the 1st Replat.

Article IV General Common Elements

The General Common Elements include all Common Elements except those specifically defined as Limited Commons Elements in Article V hereof.

Article V
Limited Common Elements

The Limited Common Elements are the areas reserved for the exclusive use of the Owners of Units including reserved parking areas, fireplaces and interior walls, window and door glass, floors and ceilings adjoining each unit and all air conditioning and heating equipment providing service to the unit and the area inside the walls of the Unit and Garage Unit.

Each individual Unit owner shall be solely responsible for the maintenance, repair and replacement of all plumbing, electrical, air conditioning and heating equipment and installations which provide services exclusively to such unit owners' unit. All appliances, including, but not limited to, hot water heaters, washer, dryers, private spas located within the unit or its related limited common elements and common elements, disposals, ovens, ranges, refrigerators, garage door openers, cleaning systems and ventilating systems, shall be maintained, repaired and replaced at the sole cost and expense of the owner of the unit in which such appliances are installed or serviced.

Article VI
Proportionate Interest In Common Elements

1. **Interest in Common Elements.** The proportionate interest of each Owner in the Common Elements is shown on **Exhibit "E"** attached hereto and made a part hereof. Each Owner shall be entitled to the undivided interest in the Common Elements shown on such exhibit, which ratio is based on the fair value of each unit in relation to the value of all units subject hereto and calculated to the following formula:

- (a) Enclosed living area square footage of each unit divided by the combined total square footage of all annexed units equals the percentage ownership of the common elements.

Article VII
Service Agent

The name of the person to receive service of process in actions against the Association and the name of the person to receive service of process on two or more Owners in actions relating to the common Elements or more than one unit is Hal Tompkins, 57171 E., Hwy. 125 Afton, Oklahoma 74331.

Article VIII
Amendment Of Declaration

Except with respect to **Article XVIII** hereof and except as hereinafter provided, the Declaration may be amended by a majority of the Owners voting in person or by written proxy at a meeting of the members of the Association duly called and held for that purpose, and any such

amendment shall become effective upon the filing, with the office of the County Clerk of Delaware County, Oklahoma, of an instrument in writing setting forth such amendment and duly executed and acknowledged by the President of the Association, as the act and deed of the Association, and attested by the Secretary or Assistant Secretary thereof. During the "Declarant Control Period", Declarant will hold a majority of the votes and thus may amend the Declaration by executing and recording an Amendment without the necessity of a formal meeting. Provided, however, the Declaration may not be amended in a manner which would allow the use of proceeds of hazard insurance policies for any purpose other than the repair, replacement, or reconstruction of the unit or units or Common Elements, without the prior written consent of seventy-five percent (75%) of all Owners and mortgagees of Owners other than Declarant; provided further that the Property may not be removed from the provisions of Unit Ownership Estate Act except with the unanimous consent of all Owners nor may the percentage interest in the Common Elements of any Owner be reduced without such Owner's consent (except as provided herein). Provided, further, that no amendment to this Declaration shall make any change in the requirements for insurance made herein, nor in any way affect the security interest or the lien of the mortgage of any mortgage holder unless the owners of all recorded mortgages upon any unit or the Property shall have consented thereto in writing.

Article IX
Restrictions As To Use

1. **Residential Purposes.** The buildings and each of the units are intended for and restricted to use for residential purposes. No gainful occupation, profession, business, trade or other non residential activity except personal business shall be conducted in any unit.
2. **Leases.** Any lease of a unit shall be for a minimum period of seven (7) days, shall be in writing and shall be subject to the terms, conditions and provisions of this Declaration. Any Unit Owner leasing a unit to a third party must register the name, address and telephone number of the lessee with the Board of Directors. The Board reserves the right to place additional limitations on leasing if deemed to be in the best interests of the Property.

Article X
Insurance

1. **Public Liability Insurance.** Comprehensive public liability insurance shall be purchased by the Association and shall be maintained in full force and effect at all times. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Oklahoma having a financial rating by Best's Insurance Reports of class VI or better. The amount of coverage shall be determined by the Board from time to time so as to provide such coverage as the Board may deem prudent, provided, for any one accident or occurrence, and \$1,000,000 for property damage. The premiums shall be paid from the assessments levied and collected pursuant to this Declaration. Such policy shall name all Owners as insureds, and shall also name, as additional insureds, such persons or entities, including the Association, the Board, and any agents or employees of the Board, as the Board may deem necessary or required in order

to insure the Association, the Board, the Owners, and their respective agents, guests and invitees, against members and invitees, or any other person, whomsoever in connection with any damage or injury occurring on the Property or resulting or arising as a result of the ownership or use of the Property or any part thereof. Such policy shall otherwise be in such form and content and contain such endorsements as the Board may deem appropriate. Such policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the condominium Association of Owners or other Unit Owners and such other endorsements as the Board may deem appropriate.

2. Fire and Extended Coverage Insurance. A blanket fire and hazard insurance policy shall be purchased by the Association and shall be maintained in force at all times, the premium thereon to be paid from the assessments levied against each of the Owners in accordance with this Declaration. Such insurance shall be obtained from reputable insurance companies authorized to do business in the State of Oklahoma having a financial rating by Best's Insurance Reports of class VI or better and shall insure against loss from fire and such other hazards as the Board may deem appropriate, and shall insure all structures and improvements upon the Property and all personal property owned by the Association or jointly by all the Owners as tenants in common for not less than one hundred percent (100%) of the full insurable replacement cost value thereof (as determined annually by the Board in conjunction with the insurance company issuing such policy). Such policy shall contain vandalism and malicious mischief coverage, together with such other coverage, endorsements, and adjustment clauses as the Board deems appropriate. Such policy shall name the Association as insured, as trustee for the benefit of all the Owners. Such policy shall name the respective mortgagees of the Owners, as their respective interests may appear, and shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by any insured or an insured's mortgagee. The Board may select such deductible, franchise or franchise deductible provisions which, in its opinion, are consistent with good business practices in connection with the purchase of such policy.

3. Use of Proceeds. All insurance proceeds available under Section 2 of this Article X shall be paid to the Association and held for the benefit of the Owners, mortgagees, and such other persons, as their respective interests shall appear, and shall be paid out in accordance with Article XI of this Declaration.

4. Additional Insurance. The Association, may, at its option, purchase and maintain in force at all times, demolition insurance in adequate amounts to cover demolition in the event of destruction of the buildings, or any of them, and the decision by Owners not to rebuild. The premium therefore shall be paid from the assessments levied against all Owners in accordance with this Declaration. Such policy, if purchased, shall contain a determinable demolition clause, or similar clause, to allow for coverage of the cost of demolition in the event of destruction and the decision not to rebuild. The Association may also purchase and maintain fidelity bonds, insurance on commonly owned personal property, and such other insurance as it may deem

necessary, the premiums therefore to be paid from the assessments levied against all of the Owners in accordance with the provisions of this Declaration.

5. Owner Insurance. Each owner is required to purchase at his sole cost personal liability and personal property insurance as he may desire; provided, however, that such policy or policies shall include a waiver of subrogation clause. The existence of such policy or policies shall not alter the obligations of the Association to obtain insurance as herein provided. Under no circumstance shall the Association be liable for the damage to or destruction of personal property located in the Property and owned individually by an Owner. The Association must be listed as additional insured, as there interests may appear.

6. Authority of Board. Each of the Owners, and every other person named as an insured in connection with any of the policies, as purchased by the Association, hereby irrevocably delegates to the Board all authority as may be necessary to negotiate loss settlements with the appropriate insurance carriers on behalf of the persons named as insureds. The Board shall have the sole and exclusive authority and right to negotiate any such loss settlements; provided, however, that any execution of a loss claim form and release form in connection with the settlement of a loss claim shall be binding on all Owners and upon any other person named as an insured on any such policy or policies only upon the execution thereof by a majority of the members of the Board.

7. Annual Review of Insurance. The Board shall review annually the limits of coverage of the policies of insurance purchased by the Association.

8. Notice of Cancellation. After the written request made by a holder of a first mortgage on a Unit to do so, the Board shall give notice to such holder ten (10) days prior to the cancellation of any policy of insurance purchased by the Association.

9. Fidelity Insurance. The Association shall purchase and maintain in full force and effect at all times fidelity insurance, insuring against dishonest acts of members of the Board, employees of the Association, and volunteers responsible for handling funds belonging to or administered by the Association. Such policy shall name the Association as insured and shall be in an amount, as determined annually by the Board, to provide adequate protection to the Association, but in no event shall such policy be in an amount less than one and one-half (1½) times the Association's estimated annual operating expenses and reserves for the current year.

10. Director and Officer Insurance. If available, the Association shall purchase and maintain a policy or policies of liability insurance insuring the Board, the officers and employees of the Association against any claims, losses, liabilities, damages or causes of action arising out of or in connection with or resulting from any act done or omission to act by any such person or entities.

Article XI

Damage To Or Destruction Of Improvements

1. Repair and Restoration. Except as hereinafter provided, damage to or destruction of any or all of the Buildings shall be promptly repaired and restored by the Association, using the proceeds of insurance, if any, on the structures damaged or destroyed for that purpose, and all Owners shall be liable for assessments for any deficiency; provided, however, that upon the occurrence of the substantially total destruction of all the buildings, or if 75% of the Owners other than Declarant, elect in writing not to proceed with the repair or restoration of the property destroyed then in that event, the Property, or so much thereof as shall remain, shall be subject to partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any shall be considered as one fund and shall be divided among all Owners on the basis of the percentage ownership of the Common Elements, as shown on Exhibit "E", after first paying, out of the respective shares of Owners, to the extent sufficient for that purpose, all liens on the unit of each Owner. Except upon substantially total destruction of all the structures or upon the written election of seventy-five percent (75%) of the Owners other than Declarant and holders of mortgages covering units comprising 51% of the interest in the Common Elements not to proceed with reconstruction, all hazard insurance proceeds shall be used exclusively for the repair, replacement, or reconstruction of the buildings. The Board, their agents, and employees shall have an easement to enter units to make repairs to Common Elements, or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the unit. The Association shall represent the Owners in connection with the adjustment of any losses.
2. Obligation of The Board. Upon the partial destruction of one or more of the building, the Board shall obtain bids from at least two reputable contractors and shall call a meeting of the Owners to consider whether reconstruction of the damage should be undertaken. Unless 75% of the Owners other than Declarant, elect in writing not to proceed with reconstruction, the Board shall award the contract for the reconstruction to the lowest bidder; provided, however, that the Board shall not be required or authorized to award such contract until it has sufficient monies, whether from insurance or the collection of special assessments levied in accordance herewith, with which to pay the cost of reconstruction as reflected by the bid to be accepted by the Board. The Board, upon awarding said contract, shall thereafter be authorized to disburse monies to the contractor in accordance with said contract out of the insurance proceeds held by the Board and the special assessments levied and collected by the Board. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of such reconstruction at the earliest possible date. All such reconstruction shall be in accordance with the plans of construction of the Property attached hereto as Exhibit "D".
3. Notice To Mortgagee. After written request made by a holder, insurer, or guarantor of a first mortgage on a Unit to do so, the Board shall give notice to such holder of any substantial damage or loss to the Property.

Article XII
Membership In Association

1. **Qualification.** Each Owner shall be a member of the Association and shall be entitled to representation in the Association in proportion to said Owner's interest in the Common Elements as shown in Exhibit "E" attached hereto and made a part hereof. If a given unit is owned by more than one owner, all such owners shall be members of the Association; provided, however, that for the purpose of representation of such unit with regard to the affairs of the Association and the voting of the members of the Association, such unit shall be represented by and entitled only to the representation shown on the attached Exhibit "E", which vote shall be exercised and cast in accordance with the provisions of the Declaration and the By-Laws. Ownership of a unit shall be the sole qualification for membership in the Association.

Provided, however, the voting power of the owners shall be subject to the expanded voting rights of the Declarant during the Declarant Control Period as set forth below.

2. **Transfer of Membership.** The Association membership of each Owner shall be an appurtenant right to the unit giving rise to such membership and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said unit and then only to the transferee of title of said unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new owner.

3. **Membership Rights of Declarant.** During the Declarant Control Period, the Declarant shall be entitled to ten (10) times the representation in the Association hereinabove specified for each unit in which it retains ownership. After the Declarant Control Period has ended, the Declarant shall be entitled only to the representation specified in the table for units in which it retains ownership.

Article XIII
Voting Rights

1. **Required Percentage of Vote.** Whenever the Declaration, the By-Laws, or the Articles requires the vote, assent or presence of a stated percentage of Owners with regard to the taking of any action or any other matter whatsoever, the requisite number of votes to constitute such stated percentage shall be the votes of Owners whose aggregate interest in the Common Elements, as determined with reference to Exhibit "E" hereto, totals such percentage. Provided, during the "Declarant Control Period" the total number of votes held by the Declarant and the total number of votes outstanding shall be calculated as set forth in the preceding Article.

In any such vote, the Declarant shall be entitled to the voting rights as set forth in the preceding Article.

2. Joint Owner Disputes. The vote for each Unit may be cast only as a Unit and votes of fractions of a Unit shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same unit. In the event more than one vote is cast for a particular unit, none of said votes shall be counted and all of said votes shall be deemed void.

Article XIV
Duties And Powers Of Association

1. Administration of Property. The Owners together with all parties bound by this Declaration, covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, By-Laws, and such rules and regulations as may be adopted by the Board, and the amendments, changes and modifications thereto as may come into effect from time to time. In the event of any inconsistency between the provisions of this Declaration and the provisions of the Articles, the By-Laws, or rules and regulations, the provisions of this Declaration shall prevail.

2. Duties and Authority of Association. The Association shall have the following powers and duties:

- (a) The Association shall acquire and pay out of the assessments levied and collected in accordance herewith, all charges incurred by operation of the Common Elements for water, gas, refuse collection, electrical, telephone, other necessary utility services, security service and all other expenses incurred in connection with safety and welfare of the Property and the operation of the Common Elements.
- (b) The Association shall maintain or cause the Common Elements and the improvements, facilities, and structures thereof to be maintained and kept in a good state of repair, and acquire for the Association and pay from assessments for such services, equipment, maintenance, painting, and repair as it may determine are necessary in order to keep and at all times maintain the Common Elements and the improvements, and facilities thereon in a good and sanitary state of condition and repair.
- (c) Except as to the taxes, levies or assessments levied separately against an individual unit, and/or the owner thereof, the Association shall pay all taxes, real and personal, and assessments, bonds and levies which are or would become a lien on the entire Property or the Common Elements.

- (d) The Association may, at its option, employ a manager, independent contractors, and such other employees as it deems necessary and prescribe their duties, and enter into contracts and agreements, all for the purpose of providing for the performance of the business, powers, duties and/or obligations of the Association, or any portion thereof. Such manager, if any, and all employees shall have the right of ingress and egress over and access to, such portions of the Property as may be necessary in order for them to perform their obligations.
- (e) The Association, at any time, and from time to time, may establish, in accordance with the By-Laws, such uniform rules and regulations as the Association may deem reasonable in connection with the use, occupancy and maintenance of the units and the Common Elements by Owners and their family members, servants, tenants, guests and invitees, and the conduct of such persons with respect to vehicles, parking, bicycle use, use of recreational facilities, control of pets, and other activities which, if not so regulated, might detract from the appearance of the Property or be offensive to or cause inconvenience, noise or damage to persons utilizing or visiting the Property. The Association shall send a copy of such rules and regulations, together with amendments and additions thereto, to each Owner upon receiving written notice of his status as an Owner. For sale signs posted by Owners are not permitted on the Common Elements.
- (f) The Association shall levy assessments against the Owners and enforce payment thereof, all in the manner and subject to limitations, set forth in this Declaration and the By-Laws.
- (g) The Association shall maintain books and records relating to the management and operations of the Property. Such books and records shall be subject to inspection and copying, during normal business hours, by any Owner and by the holders, insurers and guarantors of a mortgage on any unit.
- (h) Upon request received from the holder of any mortgage on a Unit, the Association shall notify the holder of such mortgage of any default thereafter occurring in the performance by the owner of the Unit burdened by such mortgage of any obligation hereunder or under the Articles, By-Laws or rules and regulations of the Association, which default is not cured within sixty (60) days of the date of default. Such notice shall be in writing and shall be addressed to the mortgagee at the address specified in the request submitted by the mortgagee.

- (i) No Owner shall encumber or permit any recorded encumbrance upon any Unit other than his own Unit.
- (j) The Association shall cause an annual financial statement to be prepared and available 120 days after the end of each calendar year. Any holder of a mortgage on a Residential Unit shall have the right to have an audited financial statement prepared at such holder's expense.
- (k) The Association shall have the power to perform such other acts, whether expressly authorized by the Declaration or the By-Laws as may be reasonably necessary to enforce any of the provisions of the Declaration, the By-Laws, or the rules and regulations duly adopted by the Association or to carry out and perform its powers and responsibilities.

Article XV
Assessments

1. Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or conveyance to a unit, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) regular assessments or charges, and (2) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and emergency assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a lien on the unit against which each such assessment is made, and all appurtenances thereto, which lien is created and shall be enforced in accordance with the provisions of this Article. Each such assessment (and all other assessments levied in accordance with this Declaration), together with late charges, interest, costs, penalties, and reasonable attorney's fees, as provided for by this Declaration, shall also be the joint and several personal obligation of each person who was an Owner of such unit at the time when such assessment fell due.

2. Regular Assessment.

- (a) Regular Assessment. As soon as is reasonably practicable after the election of the first Board, but in no event later than sixty (60 days) after conveyance of the first unit by Declarant the Board shall set the annual assessment to be assessed for the initial fiscal year against each unit for the purposes hereinafter specified. Assessments for each unit shall be due and payable by the Owner on the 1st day of the month designated by the Board; provided, such assessments may be paid annually or in any manner as authorized by the Board. The total of such assessments for all units for each fiscal year shall total (i) the estimated expenses of the Association in carrying out the obligations described herein for such fiscal year for the

maintenance and repair of the Common Elements (the "Maintenance Fund Requirements"), plus (ii) an amount, to be determined by the Board, to be set aside during the fiscal year to provide for a reserve fund for the repair or replacement of the Common Elements (the "Reserve Fund Requirement"). The factors to be considered by the Board in establishing such assessment shall be the same as provided in this subsection. Assessments shall commence in the month the first unit is sold by Declarant.

- (b) Fiscal Year. The fiscal year shall be the calendar year.
- (c) Increase in Assessment by Association. From and after the end of the initial fiscal year of the Association, the regular assessment may be increased by the Board for the succeeding fiscal year, such increase to be made prior to but effective as of the beginning of such fiscal year, provided that any such change shall first be approved by the vote of at least 60 percent (60%) of the members present in person or by proxy, and entitled to vote at a meeting held prior to the commencement of the fiscal year for which such increase is to be made and duly called for such purpose, at which a quorum is present, written notice of which will be sent to all members not less than ten (10) days or more than thirty (30) days in advance of the meeting, setting forth the purpose of the meeting. Notice of increase pursuant to this section shall be given by the Board to each Owner prior to the commencement of the fiscal year for which such increase is to be effective.
- (d) Certificate of Payment. The Association shall, upon demand, furnish to any Owner, mortgagee of a Owner, or prospective purchaser of any unit a certificate in writing signed by an officer of the Association, setting forth whether the assessments on the specified unit have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

3. Special Emergency Assessments. In the event that the Board shall determine that its budget for any current month is or will become inadequate to meet all expenses for any reason, including nonpayment of any Owner's assessment on a current basis, it shall immediately determine the appropriate amount of such inadequacy for such month and may levy an emergency assessment for the amount required to meet all such expenses on a current basis against the Owners of each unit; provided, however, that any such emergency assessment in an amount exceeding 150% of the amount of the then prevailing monthly assessment for each unit with respect to such unit must first be approved by 75% of the Owners, present either in person or by proxy and entitled to vote at a meeting called for such purpose at which a quorum is present, written notice of which meeting shall be sent to all members not less than 10 days nor

more than 30 days in advance of the meeting. Emergency assessments levied in accordance with this section shall be due and payable within 30 days of written notice thereof by the Board.

4. Payment of Assessments. Each payment of regular and emergency assessments made by a Owner shall first be applied to that portion of such unit's assessments allocable to the Maintenance Fund Requirement, and the remainder of such payment shall be applied to that portion of such unit's assessments allocable to the Reserve Fund Requirement.

5. Maintenance Fund. All collected assessment charges shall be properly deposited in a separate commercial bank account in a bank or trust company to be selected by the Board. The Board shall have control of said account and shall be responsible to the Owners for the maintenance of accurate records thereof at all times.

6. Reserve Fund. All collected assessment charges allocable to the Reserve Fund Requirements shall be properly deposited in a separate commercial banking account in a bank or trust company to be selected by the Board. The Board shall have control over such account and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. The funds in such account may be expended only for expenses incurred by the Association for the maintenance, repair, or replacement of the Common Elements.

7. Individual Assessments. An individual assessment may be levied by the Board against an individual unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his unit into compliance with the provisions of this Declaration and By-Laws.

8. Deficiency Assessments. The Board may levy a deficiency assessment against all Owners for the purpose of defraying, in whole or in part, the cost of reconstruction or restoration in the event that insurance proceeds or condemnation awards prove insufficient. Said deficiency assessments shall be assessed against each Owner in proportion to his unit's ownership interest in the Common Elements.

9. Non-Payment of Assessments; Lien Rights; Remedies. Every Owner is deemed to covenant and agree to pay the assessments provided for in this Declaration and further agrees to the enforcement of such assessments in the manner provided for in this Declaration.

- (a) Delinquency. Any assessment provided for in this Declaration which is not paid when due shall become delinquent on the date on which such assessment is due (the "date of delinquency"). A late charge of \$100.00 for each delinquent assessment shall be payable with respect to such assessment not paid within 15 days after the date of delinquency. Assessments not paid within 15 days after the date of delinquency shall thereafter bear interest at the rate of 15% per annum from the date of delinquency and the Board, its attorney or other authorized representative