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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**589 ELM PLACE RESIDENCES  
A CONDOMINIUM**

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**Exhibits**

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| Exhibit "E" | Schedule of Easements                               |

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
509 ELM PLACE RESIDENCES  
A CONDOMINIUM**

WHEREAS, 501 Elm Place Partners, Ltd., a Texas limited partnership, hereinafter referred to as the "Declarant," owns that certain real property and the improvements thereon situated in the County of Dallas, State of Texas, being described more fully on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Declarant desires to establish a condominium regime pursuant to the Texas Uniform Condominium Act, Title 7, Chapter 82 of the Texas Property Code (Tex. Prop. Code Ann. §§ 82.001, et seq.), with respect to said property.

NOW, THEREFORE, Declarant does hereby submit the real property described on the attached Exhibit "A" and all improvements thereon, to the provisions of the Act and the condominium regime to be known as 509 Elm Place Residences, A Condominium, and 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 and shall be a burden and a benefit to Declarant, its respective successors and assigns, and to any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

**ARTICLE I  
DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the meanings indicated.

Section 1.1 **Act.** "Act" shall mean the Texas Uniform Condominium Act, Title 7, Chapter 82 of the Texas Property Code (Tex. Prop. Code Ann. §§ 82.001 et seq.), as amended from time to time.

Section 1.2 **Allocated Interests.** "Allocated Interests" shall mean the undivided interest in the Common Elements and the Common Expense Liability allocated to each Unit.

Section 1.3 **Association.** "Association" shall mean the 509 Elm Place Residences Association, Inc., a Texas non-profit corporation, the members of which shall be the Unit Owners.

Section 1.4 **Assessments.** "Assessments" shall mean all assessments levied for the management and operation of the Association, and for the repair, maintenance, insurance and operation of the Project (including reserves for replacements), and all other fees, fines, dues or charges secured by the Assessment Lien as provided herein.

**Section 1.5 Assessment Lien.** "Assessment Lien" shall mean the continuing lien in favor of the Association against a Unit and on the rents and insurance proceeds received by a Unit Owner and relating to the Owner's Unit to secure the Owner's personal obligation to the Association to pay all Assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorneys' fees and any other amount due to the Association by the Unit Owner or levied against the Unit by the Association.

**Section 1.6 Board.** "Board" shall mean the Board of Directors of the Association.

**Section 1.7 Building.** "Building" shall mean the building situated on the Land, as more particularly described on the Plat attached hereto.

**Section 1.8 Bylaws.** "Bylaws" shall mean the Bylaws of the 509 Elm Place Residences Association, Inc. attached hereto as Exhibit "B", as same may be amended and in effect from time to time.

**Section 1.9 Common Elements.** "Common Elements" shall mean the Land, the Building and all other improvements located on the Land designated as either General Common Elements or Limited Common Elements, except for those portions herein defined as Units.

**Section 1.10 Common Expense Liability.** "Common Expense Liability" shall mean the liability for Common Expenses allocated to each Unit.

**Section 1.11 Common Expenses.** "Common Expenses" shall mean and include:

- A. All expenses of maintenance, operation, repair and replacement of and additions to the Common Elements;
- B. All expenses agreed upon as Common Expenses by the Association;
- C. All sums lawfully assessed by the Board; and
- D. All expenses declared to be Common Expenses by this Declaration, the Bylaws or by the Act.

**Section 1.12 Condominium Unit.** "Condominium Unit" shall mean one (1) Unit, together with the Unit Owner's Allocated Interest in the Common Elements appurtenant to such Unit.

**Section 1.13 Declarant.** "Declarant" shall mean 501 Elm Place Partners, Ltd. and its successors and assigns.

**Section 1.14 Declaration.** "Declaration" shall mean this instrument establishing the condominium regime known as 509 Elm Place Residences, A Condominium, as same may be amended from time to time in accordance with the provisions hereof.

**Section 1.15 Development Rights.** "Development Rights" shall mean those rights reserved herein by Declarant to create Units & Common Elements within the Project and to subdivide Units or convert Units into Common Elements.

**Section 1.16 General Common Elements.** "General Common Elements" shall mean all of the Project, except for the Units and Limited Common Elements, and without limiting the generality of the foregoing, shall include the following, to the extent within the boundaries of the Project:

- A. The Land;
- B. All foundations, columns, girders, beams, supports, load-bearing walls, load-bearing columns, roofs, entrances to and exits from any Building, exterior walls, those portions of the walls and partitions located between and dividing a Unit from other Units or separating a Unit from corridors, stairs, elevators, and other mechanical equipment spaces (not including the finished interior surfaces of the walls which are part of a Unit as defined hereinbelow), halls, lobbies, stairways, elevators and other mechanical equipment spaces, entrances and exits, communication ways, floor slabs and concrete ceilings;
- C. The exercise room facility and all other recreational facilities intended for common use, if any, located in the Project;
- D. All compartments or installations of central services, such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating reservoirs and water tanks and pumps, including all pipes, ducts, wires, cables and conduits used in connection therewith (whether located within a Common Element or within a Unit); except that all air conditioners, heat furnaces, water heaters, air handlers and compressors, and all chutes, flues, ducts, wires, conduits, pipes, and plumbing or other fixtures within the boundaries of a Unit, whether wholly or partially, and which serve only that Unit are a part or parts of the Unit until such chutes, flues, ducts, wires, conduits, pipes and plumbing or other fixtures connect to a central conduit or installation servicing more than one Unit;
- E. All elevators and shafts, garbage incinerators, sewage and drainage pipes and facilities, portions of any mechanical systems between a point of entrance to, or exit from, a Building and a point of entrance to a mechanical equipment room, and, in general, all devices or installations existing for the common use and benefit of all Unit Owners;
- F. The courtyard identified at Exhibit "C", (Sheet 3 of 8) situated at the northwest portion of the Land and accessible through the exercise room or Unit 201. The Board shall have the right to establish rules and guidelines for the use and operation of this element of the General Common Elements as provided in this Declaration; and
- G. All other elements within the Building desirably or rationally for common use or necessary to the existence or upkeep of the Project established by this Declaration.



Rights and obligations running to the Project, the Units, the Association, the Declarant and the Owners pursuant to that certain Declaration of Reciprocal Easements Agreement and Declaration of Covenants and Restrictions for Elm Place dated of even date with this Declaration and executed by Declarant and the Association (the "REA"), are not General Common Elements and do not constitute a part of the Project. Such rights and obligations are an appurtenance to the Project.

**Section 1.17 Land.** "Land" shall mean the real property described in Exhibit "A" attached hereto. By using the term "Land", it is not intended that real estate located below the Project be included as a portion of the Building, Project, Property, Units, General Common Elements or Limited Common Elements. The Land, Building and Property comprising the Project, as described on Exhibit "A" excludes real property lying below or under the Project, and the Project includes and is limited to, generally, the floor of the second floor of the Building and all improvements, air rights and any other matter or thing lying or located within an area which is of the dimensions set forth on Exhibit "A", which dimensions commence at a level which is 452.1 feet above an elevation (as such elevation is determined at Exhibit "C", Sheet 1 of 8), all as more particularly set forth on Exhibit "A". The Land, therefore, does not include ground level or street level real estate or any real property or other property lying within a height which is below 452.1 feet above an elevation (as such elevation is determined at Exhibit "C", Sheet 1 of 8). Also excluded from the Land, Project, Building and Property is all real property and improvements lying at or below ground level or street level. Included within the Land, Building, Project and Property are all air rights lying within the dimensions set forth on Exhibit "A" which are above a height of 452.1 feet above an elevation (as such elevation is determined at Exhibit "C", Sheet 1 of 8). Included within the Property, as hereafter provided, is the Declaration of Reciprocal Easement Agreement and Declaration of Covenants and Restrictions for Elm Place which both burden the Project and provide benefits to the Project as to access, services, supports, elevators, stairs, corridors, utilities, mechanical equipment and other matters and things as are set forth in this instrument.

**Section 1.18 Limited Common Elements.** "Limited Common Elements" shall mean and include those Common Elements which are reserved for the exclusive use of a Unit Owner of an individual Unit or the Unit Owners of a certain number of individual Units, as described herein and/or set forth on the Plat, including without limitation the following: Balcony areas and patios adjoining each Unit as designated on the Plat and assigned and designated as a appurtenance to such Unit.

**Section 1.19 Mortgage.** "Mortgage" shall mean a security interest, mortgage, deed of trust or vendor's lien granted by an Owner in and to, or against, a Unit to secure the repayment of a purchase money loan, and duly filed for record in the Office of the County Clerk of Dallas County, Texas.

**Section 1.20 Mortgagees.** "Mortgagees" shall mean the person, firm, corporation or other entity holding a Mortgage against a Unit. "First Mortgagee" shall mean the person, firm, corporation or other entity holding a first priority Mortgage. "Eligible Mortgagee" shall mean a First Mortgagee who has submitted a written request that the Association notify it of any proposed action requiring the consent of a specified percentage of Eligible Mortgagees.

**Section 1.21 Owner.** "Owner" shall mean a Unit Owner.

**Section 1.22 Plat.** "Plat" shall mean the plats and plans attached hereto as Exhibit "C" and hereby made a part hereof, depicting the layout of the Property and all improvements constructed thereon. It is expressly agreed and each and every purchaser of a Unit, his heirs, executors, administrators, assigns and grantees hereby agree that the square footage, size and dimensions of each Unit as set out or shown in this Declaration or in the survey plats and exhibits attached hereto, are approximate and are shown for descriptive purposes only. The Declarant does not warrant or guarantee that any Unit actually contains the area, square footage, or dimensions shown by the Plat thereof. Each purchaser and Owner of a Unit or interest therein agrees that the Unit has been or will be purchased as actually and physically existing at the time such purchase is closed. Each purchaser of a Unit expressly waives any claim or demand which said purchaser may have against the Declarant or any person whomsoever on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the respective Plat and exhibits attached hereto. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purposes whatsoever or in connection with any matter, the existing physical boundaries of the Unit shall be conclusively presumed to be the boundaries, regardless of settling, rising or lateral movements of the Building, and regardless of variances between boundaries as shown on the Plat and exhibits attached hereto and those of the Building.

**Section 1.23 Project.** The "Project" shall mean the condominium regime established by this Declaration.

**Section 1.24 Property.** "Property" shall mean the real property described in Exhibit "A", together with all improvements and structures constructed or to be constructed thereon, and all easements, rights and appurtenances belonging thereto.

**Section 1.25 Reserve Fund.** "Reserve Fund" shall mean that portion of the Assessments, as set forth in Article V herein, which is expressly reserved and set aside for the repair or replacement of Common Elements due to damage, destruction, obsolescence or condemnation of said Common Elements.

**Section 1.26 Rules and Regulations.** "Rules and Regulations" shall mean the rules and regulations adopted from time to time by the Board of Directors of the Association concerning the management and administration of the Project and the use of the Common Elements.

**Section 1.27 Special Assessments.** "Special Assessments" shall collectively mean the following:

A. "Special Condominium Assessment" shall mean an Assessment solely for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, which is for the sole use and benefit of the Unit Owners. Special Condominium Assessments shall not be assessed absent the approval by a vote of the Unit Owners, voting in person or by proxy at a meeting duly called for this purpose, holding

fifty-one percent (51%) of the Allocated Interests. The amount of any Special Condominium Assessment shall be assessed to the Unit Owners in proportion to their respective Allocated Interests in the Common Elements.

B. "Special Owner Assessments" shall mean those assessments or fines that the Association, after due notice and hearing, shall have the authority to establish and fix upon any Unit to secure the liability of the Owner of such Unit to the Association for (1) any breach by such Owner of any of the provisions of this Declaration, the Bylaws and/or the Rules and Regulations, which breach shall require an expenditure by the Association for repair or remedy or (2) any damage to the Common Elements caused by the acts or negligence of such Owner, his family, guests, invitees or tenants.

Special Assessments may be prorated and billed or collected on a monthly basis. The above-mentioned liability of any Owner is to be established as set forth in this Declaration.

Section 1.28 Special Declarant Rights. "Special Declarant Rights" shall mean the rights herein reserved by Declarant to:

- A. Complete improvements indicated on the Plat;
- B. Exercise any Development Right;
- C. Maintain sales, management and leasing offices, signs advertising the Project and models;
- D. Use easements through the Common Elements and Common Areas for the purpose of making improvements within the Project; and
- E. Appoint or remove any officer or board member of the Association during the Declarant Control Period as defined below.

Section 1.29 Unit. "Unit" shall mean an enclosed space consisting of one or more rooms occupying part of a floor or floors in a Building, which enclosed space is not owned in common with the Owners of the other Units in the Project. The boundaries of a Unit shall be the interior surfaces of its perimeter walls, floors and ceilings, and shall include the portions of the Building so described and the air space thereby enclosed. All interior walls and partitions, all heating and air conditioning equipment, chutes, flues, ducts and lines, and all utility pipes, lines, conduits, systems, plumbing, wires, electrical fixtures, and other fixtures that serve only one Unit shall also be included within the definition of a Unit, whether such items are located within the space enclosed by the boundaries of such Unit or not. The boundaries of each Unit shall be the interior surfaces of the perimeter walls, floors or ceilings, including, without limitation, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, vinyl wall or floor coverings, carpets, finished flooring and all other finishing materials applied or affixed thereto or constituting part of the finished surfaces thereof, perimeter windows and doors, including the glass of such windows, doors and sliding doors,

perimeter window frames and door frames, including the trim around such windows and doors. There are twenty nine (29) Units currently planned for the Project, and a maximum of thirty-five (35) Units which may be constructed on the Property.

**Section 1.30 Unit Owner.** "Unit Owner" shall mean a person, firm, corporation, partnership, association, trust, fiduciary or other legal entity, or any combination thereof, who owns a Unit or Units within the Project, and shall include the Declarant, but shall exclude those having an interest in a Unit or Units merely as security for the performance of an obligation. A Unit Owner shall have exclusive ownership to such Unit Owner's Unit or Units and an undivided Allocated Interest in and to the General Common Elements and Limited Common Elements appurtenant to such Owner's Unit or Units. Each Unit Owner may use the Common Elements in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of other Owners.

**Section 1.31 Miscellaneous.** Except as otherwise defined herein, all other terms used herein shall have the same meaning as defined in Section 82.003 of the Act.

## **ARTICLE II DESIGNATIONS AND DESCRIPTIONS**

**Section 2.1 Recordation of Plat.** The Plat (attached hereto as Exhibit "C") shall be filed for record simultaneously with the recording of this Declaration as a part hereof and prior to the first conveyance of any Unit. Such Plat consists of and sets forth:

- A. The name and a survey of the entire Project;
- B. The location and dimensions of all real property not subject to Development Rights, or subject only to the Development Right to withdraw, and the location and dimensions of all existing improvements within that real property;
- C. A legally sufficient description of any real property subject to Development Rights, labeled to identify the rights applicable to each parcel;
- D. The extent of any encroachments by or on any portion of the Project;
- E. To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the Project, and the location of any underground utility line that is actually known by the Declarant at the time of filing the Declaration to have been constructed outside a recorded easement;
- F. The location and dimensions of the vertical boundaries of each Unit, and the Unit's identifying number;

G. The horizontal Unit boundaries, with reference to established data, and the Unit's identifying number;

H. Any Units, appropriately identified, in which the Declarant has reserved the right to create additional Units or Common Elements;

I. The distance between the noncontiguous parcels of real property constituting the Project;

J. The location and dimensions of the Limited Common Elements, other than those described by Sections 82.052 (2) and (4) of the Act;

K. As to the real property not subject to Development Rights, all other matters required by law on land surveys; and

L. The distance and bearings locating each building from all other buildings in the Project, if any, and from at least one boundary line of the Property.

**Section 2.2 Designation of Units.** The Project is hereby divided into twenty nine (29) separately designated Units contained within the one (1) Building known as Building "A". Each Unit is identified by number and the Building is identified by letter on the Plat. The remaining portion of the Project, referred to as the Common Elements, shall be owned in common by the Unit Owners. The Owner of each Unit shall own an undivided Allocated Interest in said Common Elements, the percentages or fractions thereof for each Unit being as shown on the attached Exhibit "D". The Units in the Building are numbered 201 through 604 inclusive, the size, dimensions, location and boundaries of each being detailed on the Plat attached hereto as Exhibit "C".

**Section 2.3 Designation of Limited Common Elements.** Portions of the Common Elements are set aside and reserved for the exclusive use of the individual Unit Owners, such areas being Limited Common Elements. The Limited Common Elements reserved for the exclusive use of certain individual Units are the balconies and patios shown on the Plat, together with any other Limited Common Elements described in this Declaration. Such Limited Common Elements shall be used in connection with the particular Unit, to the exclusion of the use thereof by other Unit Owners, except by invitation.

**Section 2.4 Regulation of Common Areas and Common Elements.** Portions of the Common Elements are intended as recreation areas, and are improved with exercise equipment and other recreational facilities. Rules and Regulations governing the use of such facilities by Owners and by their tenants, guests and invitees shall be promulgated by Declarant, or by the Board of Directors of the Association after the same has been elected. Such Rules and Regulations shall be permanently posted at the office and/or elsewhere in said recreational areas, and all Owners shall be furnished with a copy thereof. Each Owner shall be required to strictly comply with said Rules and Regulations, and shall be responsible to the Association for compliance therewith by the members of their respective families, relatives, guests, invitees, and lessees and their respective families, relatives, guests and invitees, both minor and adult.

**Section 2.5 Inseparable Units.** Each Unit and its corresponding Allocated Interest in and to the Common Elements appurtenant thereto shall be inseparable and may not be conveyed, leased or encumbered separately, and shall at all times remain indivisible, and shall not be the object of an action for partition or division of the co-ownership thereof so long as the provisions of this Declaration remain in effect as to such Unit, and, in any event, all Mortgages must be paid in full prior to bringing an action for partition or the consent of all Mortgagees must be obtained.

**Section 2.6 Descriptions.** Every deed, lease, mortgage, trust deed or other instrument may legally describe a Condominium Unit by its identifying Building letter and Unit number, as shown on the Plat, followed by the words "509 Elm Place Residences, A Condominium" and by reference to this recorded Declaration and Plat. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the Condominium Units.

**Section 2.7 Encroachments.** If any portion of the Common Elements encroaches upon a Unit or Units, as a result of any construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion or portions of a Unit or Units encroach upon the Common Elements, as a result of any construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. A valid easement also exists as to that portion of the Common Elements (General and Limited) occupied by any part of an Owner's Unit not contained within the physical boundaries of such Unit, including, but not limited to, space occupied by heating and air conditioning equipment, utility lines and similar equipment which serve only one (1) Unit. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or the individual Units.

**Section 2.8 Governmental Assessment.** Declarant shall give written notice to the tax assessor's office of the creation of condominium ownership of this Project, as is provided by law, so that each Unit and its undivided Allocated Interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation.

**Section 2.9 Easements and Licenses.** A description of and the recording data for all recorded easements and licenses appurtenant to or included in the Project or to which any portion of the Project is or may become subject by reservation in this Declaration are set forth in Exhibit "E" attached hereto and made a part hereof for all purposes.

### ARTICLE III. RIGHTS AND OBLIGATIONS OF OWNERSHIP

**Section 3.1 Ownership.** A Condominium Unit will be a fee simple estate and may be held and owned by any person, firm, corporation or other entity singularly, as joint tenants, as tenants-in-common, or in any real property tenancy relationship recognized by the laws of the State of Texas.

**Section 3.2 Partition.** The Common Elements (both General and Limited) shall be owned in common by all of the Unit Owners and shall remain undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements, and, in any event, all Mortgages must be paid prior to the bringing of an action for partition or the consent of all Mortgagees must be obtained.

**Section 3.3 Exclusiveness of Ownership.** Each Unit Owner shall be entitled to exclusive ownership and possession of his Unit. Each Unit Owner may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Unit Owners.

**Section 3.4 Occupancy.** Each Unit shall be occupied and used or leased by the Unit Owner only as and for a single-family residential dwelling for the Unit Owner, his family, his social guests or his tenants, and for no other purpose. The foregoing restriction as to single-family residential use only shall not, however, be construed in such manner as to prohibit a Unit Owner from maintaining a personal professional library or conducting a personal business or professional telephone calls or correspondence, provided such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restriction.

**Section 3.5 Mechanic's and Materialman's Liens.** No labor performed or materials furnished and incorporated in a Unit, notwithstanding the consent or request of the Owner, his agent, contractor or subcontractor, shall be the basis for filing of a lien against the Common Elements. Each Unit Owner shall indemnify and hold harmless each of the other Owners, the Board, the managing agent and the Association from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in such Owner's Unit at such Owner's request.

**Section 3.6 Right of Entry.** The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom or to prevent or terminate waste of water purchased by the Association as a Common Expense, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units. Except in the case of an emergency, the Association shall give such Unit Owner at least twenty-four (24) hours notice of the need to enter for maintenance, repair or replacement of Common Elements, so as to not unreasonably interfere with such Owner's use of the Unit. Each Unit Owner shall also have the irrevocable right to have access to each Unit and the Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of such Owner's Unit or the Common Elements located therein or accessible therefrom. Except in the case of an emergency, a Unit Owner shall give such other Unit Owner or the Association at least twenty-four (24) hours notice of the need to enter such other Owner's Unit or the Common Elements for maintenance, repair or replacement of the Owner's Unit. In the case of an emergency a Unit Owner shall contact the managing agent of the Association to gain access to such other Unit. If damage is inflicted on the Common Elements or on any Unit through which access is taken, the Unit Owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair of the damage.

**Section 3.7 Easements.** Each Unit shall have, and each Unit and the Common Elements shall be subject to, an easement for the use and maintenance of all rights of ingress and egress, including, but not limited to, hallways, stairways, communication ways, driveways and walkways providing access to or egress from each Unit. Each Unit shall also have an easement in and to that portion of the General Common Elements or Limited Common Elements that is occupied or contains any part of such Unit that is not contained within the physical boundaries of such Unit, as same is defined hereinabove, including, but not limited to, the space occupied by heating and air conditioning equipment, utility pipes and lines, and other similar apparatus or equipment which serves only that one (1) Unit. Each Unit shall further have an easement of support and of necessity in, and shall be subject to an easement of support and of necessity in favor of, all other Units, the General Common Elements and the Limited Common Elements.

**Section 3.8 Unit Owner Maintenance.** A Unit Owner shall maintain and keep in repair the interior of his own Unit and his assigned balcony and/or patio space, if any. Each Owner shall bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers and any and all other appliances of any nature whatsoever; interior and exterior doors; interior glass surfaces window panes, mullions and light bulbs; plumbing and other fixtures of an nature whatsoever; "built-in" features, any decorative features; and any furniture and furnishings. All of the exteriors of the doors and all glass in windows and doors will remain in conformity with the original installation.

**Section 3.9 Alteration and Architectural Control.** A Unit Owner shall do no act nor any work that will impair the structural soundness and integrity of the Building or impair any easement or hereditament. No Unit Owner shall in any way alter, modify, add to or otherwise perform any work whatever, including, but not limited to, landscaping, upon any of the Common Elements, Limited or General, without the prior written consent and approval in writing by the Board of Directors. Any alteration or modification of a Unit or of any of the Common Elements, Limited or General, shall be in harmony with the external design and location of the surrounding structures and topography and shall not be considered and no work shall be commenced until after said Unit Owner has submitted to the Board complete plans and specifications showing the nature, kind, shape, size, materials, color and location for all proposed work, and same have been approved by the Board.

**Section 3.10 Restriction of Ownership.** A Unit Owner shall not be deemed to own the unfinished surfaces of the perimeter walls, floors, ceilings, balconies and roofs surrounding such Unit, nor shall a Unit Owner be deemed to own the utilities running through such Unit which are utilized for, or serve one (1) or more Units other than such Unit, except as a tenant in common with the other Owners. A Unit Owner shall be deemed to own and shall maintain the inner, finished surfaces of the perimeter and interior walls, floors and ceilings, doors, windows and other such elements consisting of paint, wallpaper, carpet, tile and other such finishing materials.

**Section 3.11 Liability for Negligent Acts.** In the event the need for maintenance or repair is caused through the willful or negligent act of a Unit Owner, his family, relatives, guests, invitees, or lessees or their family, relatives, guests or invitees, and is not covered or paid for by insurance either on such Unit or the Common Elements, the cost of such maintenance or repairs shall be a



Special Owner Assessment added to and a part of the Assessments to which such Unit is subject, pursuant to Article V hereof. Such liability is limited to the liability such Unit Owner has under Texas law.

**Section 3.12 Leasing of Units.**

A. Units may be rented, provided the lease is in writing, and the occupancy is only by the tenant, the tenant's family and guests as a single-family residence in accordance with Section 3.4 hereinabove. Units may also be leased as corporate apartments. However, no Unit may be leased for transient or hotel purposes, nor may less than the entire Unit be leased. For the purposes of this Section, "transient or hotel purposes" is defined as a period less than thirty (30) days.

A copy of each lease and a statement setting forth (1) the term of the lease, (2) the names, telephone numbers and driver's license numbers of all persons to occupy the Unit under the terms of the lease, (3) the license plate numbers of the vehicles driven by such occupants, and (4) certifying that copies of this Declaration, the Bylaws, the Rules and Regulations and any amendments thereto have been made available to the intended tenant and all other intended occupants of the Unit for inspection and review, shall be filed with the Association. All leases shall contain a provision that such lease is subject to, and the tenant is bound by, the conditions, covenants, limitations and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations. Both the Unit Owner and his tenant(s) shall be jointly and severally liable to the Association for any and all damages to the Common Elements caused by said tenant(s). Leasing of a Unit shall not relieve the Unit Owner of his rights, responsibilities and obligations under this Declaration, the Bylaws and the Rules and Regulations, including specifically, but not limited to, the duty to pay Assessments, and same shall be as fully enforceable as to such Unit Owner as though he himself were occupying such Unit.

B. A Unit Owner intending to lease a Unit shall provide the Board with a duly executed limited power of attorney empowering the Board to take all reasonable actions necessary to enforce compliance with this Declaration, the Bylaws, and any other Rules and Regulations duly adopted and published by the Board on the part of the intended tenant and all other intended occupants of said Unit, including, without limitation, the power to evict by forcible detainer the intended tenant and/or any and all other intended occupants of such Unit for failure to comply with any provisions contained in this Declaration, the Bylaws or any Rules and Regulations duly adopted and published by the Board, subject to the terms and provisions of Paragraph C of this Section 3.12.

C. Upon the occurrence of a violation of any covenant, condition, restriction, rule or regulation contained in this Declaration, the Bylaws or the Rules and Regulations as same may be adopted from time to time by the Board, by a tenant of a Unit, the Board shall give written notice of said violation, which notice shall specify a reasonable opportunity within which to cure such violation which opportunity in no event shall be less than ten (10) days from the date of delivery of said notice, to both the Unit Owner and the tenant of the Unit.

In the event neither the tenant nor Owner of the subject Unit take the necessary action to cure the violation within the time period set forth in the first notice, then the Board shall give a second written notice to both the Owner and tenant of the subject Unit that the violation has not been cured and making demand upon the Owner to initiate proceedings to evict the tenant within ten (10) days from the date of delivery of said notice. The second notice shall also state that in the event the Owner has not initiated eviction proceedings within said time, the Board shall proceed with the eviction pursuant to its Power of Attorney. So long as the Unit Owner has initiated the eviction proceedings or otherwise remedied the subject violation within said time and continues thereafter to prosecute the eviction proceedings with reasonable diligence until the offending tenant and/or occupants have been removed from the premises or otherwise have cured the subject violation, the Board shall not exercise or attempt to exercise its power of attorney with respect to the eviction of the tenant or other occupants of the Unit.

D. All notices required under Paragraph C above to the intended tenant or other intended occupants of the Unit, shall be delivered by hand to the tenant or occupant in person or by affixing same securely to the door of the Unit and shall be effective as of the date of such delivery. The date of such delivery is presumed to be the same as the date of the notice. All notices required under Paragraph C above to the Owner of a leased Unit shall be sent by United States certified mail, return receipt requested, first class postage prepaid and shall be deemed delivered within three (3) days after the date said notice is deposited into an official depository under the care, custody and control of the United States Postal Service.

E. In the event that the Board is forced to exercise the power of attorney on conformance with the conditions of Paragraph C above, such exercise shall be in the name of, and as the agent for the Unit Owner of the Unit. The Board shall have no obligation or liability to either the Unit Owner or the intended tenant and occupants of the Unit for wrongful eviction except upon proof that there was no breach of any of the covenants, conditions, rules and restrictions of this Declaration, the Bylaws or any rules and regulations duly adopted and published by the Board.

**Section 3.13 Specific Power to Restrict Use and Enjoyment.** Every Unit Owner and the Declarant shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following limitations, restrictions and provisions:

A. The right of the Association to publish rules and regulations governing use of the Common Elements, and the improvements and facilities located therein, and to establish and enforce penalties for infractions thereof.

B. The right of the Association to charge reasonable fees for the use of the Common Elements for special events, parties and other uses not open to all Owners.

C. The right of the Association, as allowed by law, to borrow money and pledge or collaterally assign its right to receive Assessments, including the Assessment Lien, to secure the repayment thereof for the purpose of improving the Common Elements

D. The right and duty of the Association to suspend the voting rights and the right to the use of the recreational facilities by a Unit Owner for any period during which any Assessment against such Owner's Unit which has been delinquent for more than thirty (30) days remains unpaid.

E. The right of the Association to dedicate or transfer all or any part of the Common Elements for utility easements to any public agency, authority or utility for the purposes, and subject to the conditions, of such agency, authority or utility. No such dedication or transfer shall be effective unless approved by a vote of the Owners holding at least sixty-seven percent (67%) of the Allocated Interests at a meeting of the Association specifically called for the purpose of approving any such dedication or transfer, and unless an amendment to the Plat signed by the Board of Directors reflecting such vote of the Unit Owners agreeing to such dedication or transfer has been duly recorded in the Condominium Records of Dallas County, Texas, provided further that should such easement change, alter or otherwise affect a Unit or the Limited Common Elements appurtenant thereto, then the consent of the Unit Owner and Mortgagee of such affected Unit must be obtained.

F. The right, but not the obligation, of the Association to adopt, implement and maintain a private security system for the Property consistent with applicable laws.

G. The right of the Association to establish Rules and Regulations governing parking in the garage serving the Building and the use of the Common Elements, and to establish sanctions for any violation or violations of such Rules and Regulations.

H. The right of the Association to regulate noise within the Property.

I. The right of the Association to control the visual attractiveness of the Property, including without limitation, the right to require Owners to eliminate objects which are visible from the Common Elements and which, in the Association's judgment, detract from the visual attractiveness of the Property.

#### Section 3.14 Use Restriction.

A. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, invitees and licensees for access, ingress to and egress from the respective Units and for other purposes incidental to use of the Units; provided, however that any areas designed for specific use shall be used for the purposes described herein or otherwise approved by the Board.

B. The use, maintenance and operations of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Owner; but shall be subject to lease, concession or easement, presently in existence or entered into by the Board at some future time.

**Section 3.15 Special Declarant and Development Rights.** Declarant shall be entitled to exercise the Special Declarant Rights and any of the following Development Rights at any time prior to the termination of the Declarant Control Period, as defined in Section 4.2 hereinbelow:

A. Declarant may convert a Unit or Units entirely to Common Elements by preparing, executing and recording amendments to this Declaration reallocating the Allocated Interests among the Units as if the Unit or Units had been taken by condemnation and designating the converted Unit or Units as Common Elements.

B. Declarant may subdivide a Unit into two (2) or more Units, whether or not any part of the Unit is converted into Common Elements, by preparing, executing and recording amendments to this Declaration reallocating the Allocated Interest of the Unit among the new Units created by the subdivision in any reasonable manner prescribed by Declarant. In the event a portion of the Unit is also converted into Common Elements, the amendments to this Declaration must also designate the portion of the Unit converted into Common Elements.

C. Prior to the sale of the first (1<sup>st</sup>) Unit to a Unit Owner other than Declarant, Declarant may withdraw the entire Property from the condominium regime by preparing, executing and recording (1) an affidavit terminating this Declaration.

D. Upon exercising any of the above Development Rights, Declarant may include such other amendments to this Declaration as are necessary to conform the Declaration to the new Units and/or Common Elements so created.

E. Until such time as all of the Units in the Project have been sold, Declarant reserves the right for itself, its agents and contractors, to make use of its unsold Units and the Common Elements, including the use of a model Unit or Units for display, sales office, and installation and display of signs as necessary to its sale program to the fullest extent permitted under the Act; provided, however, there shall not be more than two (2) model Units.

F. There is specifically reserved unto the Declarant in connection with Declarant's exercise of any of its Development Rights, until such time as all of the proposed Units, and/or improvements to the Property have been completed, an easement in and to the Common Elements, and in and to all utility lines and easements, including without limitation, easements for sanitary sewer, water, storm sewer, electricity, gas, cable television, and telephone, for use as necessary to effect and complete the construction of the proposed Units and/or improvements to the Property; provided, however, that such use shall not unreasonably interfere with the use and enjoyment of the Common Elements by the Owners.

G. Declarant shall have an easement through the Common Elements as may be reasonably necessary for discharging the Declarant's obligations or exercising the Declarant's Special Rights arising under or reserved by this Declaration.

H. Declarant, or persons designated by Declarant, may appoint and remove the officers or members of the Board.

**Section 3.16 Subject to Declaration and Bylaws.** Each Owner and the Association shall comply strictly with the provisions of this Declaration, the Bylaws, the Rules and Regulations, 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, including attorneys' fees, or for injunctive relief, or both, maintainable by the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner against another Owner or against the Association.

**ARTICLE IV.  
MANAGEMENT AND OPERATION OF THE PROJECT**

**Section 4.1 Management by Association.** The administration of the Project shall be governed by this Declaration and the Bylaws of the Association, which shall be organized as a Texas non-profit corporation pursuant to the Texas Non-Profit Corporation Act. The Association shall have the rights, powers, and duties of a "unit owners' association" as that term is used in the Act. The Association shall have the power and obligation to provide for the maintenance, repair, replacement, administration, insurance, and operation of the Common Elements as herein provided for, and as provided for in the Bylaws and in the Rules and Regulations.

**Section 4.2 Declarant Control.** Section 4.1 notwithstanding, and for the benefit and protection of the Owners and any First Mortgagees of record for the sole purpose of insuring a complete and orderly buildout as well as a timely sellout of the Project, and the Declarant shall retain control of and over the Association, through the appointment of the Board, until the earlier to occur of the following: (a) one hundred twenty (120) days following the closing of the sale of seventy-five percent (75%) of the Units in the aggregate to third parties, (b) three (3) years after the date the first Unit is conveyed to a third party, or (c) when in the sole opinion and discretion of the Declarant, the Project becomes viable, self-supporting and operational ("Declarant Control Period"). Notwithstanding the foregoing, however, no later than the one hundred twentieth (120<sup>th</sup>) day after the closing of the sale of fifty percent (50%) of the Units in the aggregate to third parties, not less than one-third (1/3rd) of the members of the Board must be elected by Owners other than Declarant. It is expressly understood that the Declarant will not use said control for any advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any management agreement between the Association and the Declarant which is not terminable by the Association without cause at any time. Within thirty (30) days prior to the end of the Declarant Control Period, the Declarant shall call an annual meeting of the Association for the purpose of electing, by ballot of the Owners, a new Board of Directors and to transact such other business of the Association as may properly come before it.

**Section 4.3 Temporary Management Agent.** During the period of administration of the Project by Declarant, the Declarant may employ or designate a temporary manager or managing agent, who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by Declarant to him. The Declarant

may pay such temporary manager or managing agent such compensation as it may deem reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses of the Project and shall be paid out of the Assessments.

**Section 4.4 Membership, Voting, Quorum, Proxies.**

**A. Membership.** Any person on becoming an Owner of a Unit shall automatically become a Member of the Association. Such membership shall terminate without any formal Association action whenever such person ceases to own a Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Project during the period of such ownership and membership in the Association, or impair any rights or remedies which the Board, the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Board may, if it so elects, issue one (1) membership card to the Owner(s) of a Unit. Such membership card shall be surrendered to the Secretary whenever ownership of the Unit designated thereon shall terminate.

**B. Voting.** Ownership of a Unit shall entitle the Owner(s) to cast one (1) vote per Unit in the affairs of the Association, which vote will be weighted to equal each Unit Owner's Allocated Interest in the Common Elements. Voting shall not be split among more than one (1) Owner of a Unit. At any meeting of the Owners, the multiple Owners of a Unit present at the meeting shall provide the Board a written designation as to which of said multiple Owners of such Unit shall be entitled to cast the vote on behalf of such Unit. If only one (1) of such multiple Owners of a Unit is present at a meeting of the Owners, it shall be conclusively presumed that such single Owner of such Unit has the authority to cast the vote on behalf of such Unit, and no other multiple Owner of such Unit may later complain of any action taken by the Association on which such single Owner voted in favor of as the representative of such Unit.

**C. Quorum.** The Unit Owners holding at least fifty-one percent (51%) of the Allocated Interests in the Project shall constitute a quorum.

**D. Proxies.** Votes may be cast in person or by proxy in accordance with the provisions of the Bylaws. Proxies shall be filed with the Secretary at or before the appointed time of each meeting.

**Section 4.5 - Board of Directors.** The affairs of the Association shall be managed by a Board of three (3) Directors. Each member of the Board must be an Owner (or an authorized representative of the Owner if the Owner is not an individual) with the exception of the initial Board members who shall be appointed by the Declarant during the Declarant Control Period and who need not be Owners.

**Section 4.6 Powers and Duties of the Association.** In addition to all other rights, functions and obligations of the Association under the provisions of the Act, this Declaration, or the Bylaws, the Association shall have the following rights, functions and obligations:

**A. Right to Nonexclusive Easement.** The Association shall have a nonexclusive right and easement to make such use of the Common Elements as may be necessary or appropriate for it to perform the duties and functions which it is obligated or permitted to perform under the Act, this Declaration, or the Bylaws, and a nonexclusive right of entry, after reasonable notice to the Owners and during reasonable hours, into the individual Units, as more fully set forth hereinabove, as may be necessary for the operation of the Project, or for making emergency repairs therein necessary to prevent damage to any other Unit or to the Common Elements or any part thereof, or to abate any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in a Unit, except that no notice shall be required in cases of emergency.

**B. Common Maintenance.** The Association shall provide, as a Common Expense of all Unit Owners, for the use, operation, management, maintenance, repair, replacement and restoration of the Common Elements. Without limiting the generality of the foregoing, said obligations shall include keeping the Common Elements in good, clean, attractive and sanitary condition, order and repair, and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

**C. Other Association Functions.** The Association may undertake or contract for any lawful activity, function or service for the common benefit or to further the common interests of all Owners. Such activities, functions, or services may include, but shall not be limited to, the providing of insurance, police, patrol or similar security services, janitorial services, grounds maintenance or landscaping services, utilities or services which may be required for the enjoyment or betterment of the Common Elements, water, garbage and trash collection and sewage disposal services and other services for each of the individual Units, legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of the provisions of the Act, this Declaration, or the Bylaws, and any other services for the benefit and enjoyment of all the Owners. Electricity, telephone, water, sewage and other utility services separately metered and charged shall be paid for by the Owner of the Unit to which such utility services are furnished.

**D. Labor and Services.** The Association may as a Common Expense of the Owners obtain and pay for the services of any person or entity as a manager or managing agent, in accordance with Section 4.7 hereinbelow and the Bylaws, to manage, supervise and look after the day to day operations of the Project, as well as the services of such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts.

**E. Acquisition of Personal Property as General Common Elements.** The Association may acquire as a Common Expense and hold for the common use or benefit of all Unit Owners, any tangible or intangible personal property and may dispose of the same by sale or otherwise. Subject to the Rules and Regulations of the Association, each Owner, his family, relatives, guests, invitees and tenants may use such personal property. All such personal property so acquired and owned by the Association shall be deemed to be part of the General Common Elements for all purposes.

**F. Rules and Regulations.** The Association may make and enforce Rules and Regulations governing the use of the individual Units, the General Common Elements and the Limited Common Elements. Such Rules and Regulations may, without limitation: (i) regulate the use of General Common Elements to assure the equitable and proper use and enjoyment thereof by all persons entitled thereto; (ii) prohibit any conduct or activity in any Unit, or on any part of the Common Elements or Limited Common Elements, which constitutes a nuisance in law or in fact or which would not be consistent or in keeping with the peaceful, quiet and reasonable use and enjoyment of any Unit or the Common Elements; and (iii) prohibit, restrict or regulate the use of any portion of the General Common Elements.

The Association shall furnish each Owner with a written copy of each and every Rule and Regulation or shall post the same in a conspicuous place on the Common Elements; however, failure to furnish or post any copy shall not be deemed to invalidate any rule or regulation to any extent.

The Association shall have the right to enforce any of the Rules and Regulations of the Association and the obligations of any Owners under this Declaration, or the Bylaws.

Nothing herein shall authorize the Board to furnish to any person services primarily for the benefit or convenience of any Owner or Owners or any occupant or occupants of any Unit other than services customarily rendered to all Owners and occupants of Units. The Board shall have the exclusive right and obligation to contract for all goods, services and insurance in connection with the administration of the Project, payment for which is to be made from the Assessments as a Expense, except as otherwise provided herein.

**G. Resolution of Disputes.** In addition to its other powers conferred by law or hereunder, the Board shall be empowered to create procedures for resolving disputes between Owners and other Owners, the Board, or the Association, including appointment of committees to consider and recommend resolutions of any such dispute.

**Section 4.7 - Management Agreements.** Each Owner hereby agrees to be and is hereby bound by the terms and conditions of any management agreements entered into by the Association. Any and all management agreements entered into by the Association, or any other contract providing for services by the Declarant, shall provide that said agreement may be canceled upon thirty (30) days written notice when authorized by a vote of the Owners holding a majority of the Allocated Interests, but in no event shall such management agreement be canceled prior to the negotiation by the Association or the Board of a new management agreement with a party or parties, which new



management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association and the Board to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type. The Owners of the Association may terminate the professional management of the Property and assume self-management by the Association when authorized by a vote of Owners holding a majority of the Allocated Interests. In such event, notice of such action shall be given to all Mortgagees prior to the effective date of termination. A copy of all such agreements shall be available to each Owner.

#### **ARTICLE V. ASSESSMENTS**

**Section 5.1 Assessments Mandatory.** All Unit Owners, including the Declarant, are bound to contribute, in proportion to their respective Allocated Interests in the Common Elements, to the payment of Common Expenses as an Assessment covering the expenses of the administration, insurance, maintenance and repair of the Common Elements and other expenses authorized by the terms hereof which are for the exclusive use and benefit of the Unit Owners. No Unit Owner shall be exempt from the obligation to make such contribution of Assessments by waiver of the use and enjoyment of the Common Elements, either general or limited, or by abandonment of such Unit Owner's Unit, or under any circumstances.

**Section 5.2 Determination of Budget and Fixing of the Annual Assessments.** The Board shall annually prepare a budget for the Project, fixing and determining the amount of the annual Assessments payable to the Owners to meet the Common Expenses of the Project and allocate and assess such annual Assessments among the Owners in the manner set forth in this Section 5.2.

A. Common Expenses, upon which the annual Assessment shall be based, shall include:

- (1) Expenses for the operation, maintenance, repair or replacement of or additions to the Common Elements, General or Limited; and
- (2) All insurance premiums and expenses relating thereto, including fire and casualty insurance and any other expenses designated as Common Expenses from time to time by the Board.

The Board may also include as part of the annual Assessment any amounts necessary to make up any deficit in the Common Expenses for a prior year.

The Board shall establish an adequate Reserve Fund for replacement of the Common Elements, General and Limited, to be part of the annual Assessment. In addition, there shall be established a working capital fund ("Working Capital Fund") for the initial operation of the

Project equal to at least two (2) monthly installments of the estimated annual Assessment for each Unit, said deposit to be collected at closing of the sale of each Unit. No portion of the Reserve Fund or Working Capital Fund may be used to pay operational expenses until the expiration of the Declarant Control Period. At the expiration of the Declarant Control Period, the Declarant shall deposit into the Working Capital Fund two (2) monthly installments of the estimated annual Assessment for each Unit then owned by Declarant; and Declarant shall then transfer the Reserve Fund and Working Capital Fund to the Association which shall deposit such monies in a segregated account. Notwithstanding the foregoing, however, if and when Declarant conveys the unsold Units to third parties, Declarant may reimburse itself for funds paid by the Declarant to the Association for the unsold Units' share of the Working Capital Fund by collecting such funds at the closing of the sale of such Units from the purchaser(s) thereof.

B. The Board shall promptly advise all Owners in writing of the amount of the annual Assessments payable by each of them, respectively, as determined by the Board, as aforesaid, and shall furnish copies of the budget on which the Assessments are based to all Owners.

C. The annual Assessment shall be allocated according to each Unit Owner's Allocated Interest in and to the Common Elements as provided in Exhibit "C" attached hereto and shall commence upon conveyance of the Unit to the Unit Owner.

D. The Board shall have authority to lower the monthly assessment, if it deems feasible.

**Section 5.3 Special Assessments for Improvements.** In addition to the annual Assessments authorized above, the Association, through the Board, may levy at any time during the calendar year a Special Condominium Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the respective annual budgets, contingencies or Reserve Funds, including the cost of construction or reconstruction, repair or replacement of the Common Elements, as well as the necessary fixtures and personal property related thereto. Any such Assessment must be approved in the manner set forth in Section 1.22, hereinabove, and shall be allocated among the Units in the same manner as the annual Assessments.

**Section 5.4 Special Owner Assessments.** Before the Association, through the Board, may assess a Special Owner Assessment for either property damage for which the Owner is liable or a fine for violation of the Declaration, Bylaws or Rules and Regulations, the Association shall give to the Owner a written notice that:

A. Describes the violation or property damage and states the amount of the proposed fine or damage charge;

B. States that no later than the thirtieth (30<sup>th</sup>) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or damage charge; and

C. Allows the Owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the Owner was given notice and reasonable opportunity to cure a similar violation within the preceding twelve (12) months, in which case no cure period shall be required.

The Association may also give a copy of the notice to a tenant or other occupant of the Owner's Unit.

**Section 5.5 Declarant's Obligation for Assessments.** Until the Association sets the annual Assessment, the Declarant shall pay all of the expenses of the Project as the expenses accrue. From the date of the initial levy of the Assessments, the Declarant shall pay to the Association the Assessments allocated to each Unit owned by Declarant, the same as any other Owner.

**Section 5.6 Payment of Assessments.** The annual Assessments shall be payable in twelve (12) equal monthly installments following the date of the last determination of such Assessments by the Board. Such payments shall be due and payable in advance on the first (1<sup>st</sup>) day of each month. The installments shall be prorated if the ownership of a Unit commences on a day other than the first (1<sup>st</sup>) day of the month. If, at any time, an Owner is in arrears more than fifteen (15) days with respect to the payment of the second of two (2) monthly installments, which need not be consecutive monthly installments, the Board may, at its option, accelerate the due date of the remaining unpaid monthly installments for that budget year and declare said sums immediately due and payable and give notice of such action to such Owner. From and after the date of such notice, the Board may enforce the payment of any such sums determined to be due as in the case of any other Assessment. Special Assessments shall be payable on or before ten (10) days after the date the Owners are invoiced therefor.

The failure or delay of the Board to prepare any annual budget or to deliver copies of such budgets to each Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay assessments whenever the same shall be determined, and in the event of any delay or failure to establish any annual budget, each Owner shall continue to pay the annual Assessment, monthly, at the rate established for the previous period until a new annual budget is established.

**Section 5.7 Interest on Unpaid Assessments.** Assessments that are unpaid for over fifteen (15) days after the due date shall bear interest at the rate of ten percent (10%) per annum from the due date until paid.

**Section 5.8 Lien for Assessments.**

A. By acceptance of a deed to a Unit, each Unit Owner expressly covenants and agrees that Assessments, Special Assessments and Special Owner Assessments assessed but unpaid by a Unit Owner for his share of Common Expenses, fines, fees, damages and other charges and assessments chargeable to his respective Condominium Unit, including interest thereon at ten percent (10%) per annum, plus any attorney's fees and expenses incurred by

the Association in order to enforce compliance by any Unit Owner with the terms of this Declaration, the Bylaws, Articles of Incorporation, or Rules and Regulations of the Association, shall constitute a lien on such Condominium Unit superior (prior) to all other liens and encumbrances, except only for:

(1) A lien for real property taxes and special assessments levied by governmental and taxing authorities unless otherwise provided by Section 32.05 of the Texas Tax Code, as same may be amended from time to time;

(2) A lien or encumbrance recorded before this Declaration was recorded;

(3) A first vendor's lien or first deed of trust lien recorded before the date on which the Assessment sought to be enforced becomes delinquent under this Declaration, the Bylaws or the Rules and Regulations, provided, however, that in no event shall more than six (6) months of delinquent monthly Assessments have priority over any such first deed of trust lien; and

(4) A lien for construction of improvements to the Unit or an assignment of the right to insurance proceeds on the Unit if the lien or assignment is recorded or duly perfected before the date on which the Assessment sought to be enforced becomes delinquent under this Declaration, the Bylaws or the Rules and Regulations.

B. The Association's Assessment Lien is created by recordation of this Declaration which constitutes record notice and perfection of the Assessment Lien. No other recordation or notice of a lien is required. However, to further evidence such lien the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed by one (1) of the Board of Directors or the managing agent, provided the Board has granted the managing agent such authority, and may be recorded in the Office of the County Clerk of Dallas County, Texas. The Assessment Lien shall attach, with or without the recording of a written notice of such Lien, from the date of the failure of payment of the Assessment. The Assessment Lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association; provided, however, that the Association may not foreclose an Assessment Lien consisting solely of fines against the Unit Owner, unless otherwise permitted by the Act. By acquiring a Unit, a Unit Owner grants to the Association a power of sale in connection with the Association's Assessment Lien. By written resolution, the Board may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. Any such foreclosure sale is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Texas Property Code, as same may be amended from time to time. In any such foreclosure, the Unit Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice of claim of lien (if one is prepared and filed) and all reasonable attorneys' fees.

C. In addition, to the extent permitted by law, Declarant hereby reserves and assigns to the Association, with recourse, a vendor's lien against each Unit to secure payment of any Assessments or Special Assessments which are levied pursuant to the terms hereof. Said liens may be enforced by appropriate judicial proceedings and the expenses incurred in connection therewith, including, but not limited to, interest, costs and reasonable attorney's fees, shall be chargeable to the Unit Owner in default. Such lien shall be subordinated and inferior to those liens listed in Subparagraphs A(1) through (4) of this section.

D. The Association shall have the power to bid in the Unit at foreclosure sale as a Common Expense and to acquire and hold, lease, mortgage, encumber, exchange, sell and/or convey same.

E. The amount of any Assessment, Special Assessment, fee, fine or other charge against each Condominium Unit shall also be a debt of the Owner thereof at the time the Assessment, Special Assessment, fee, fine or other charge is made. Suit to recover a money judgment for unpaid Assessments, Special Assessments, fees, fines or other charges shall be maintainable without foreclosing or waiving the lien securing same. Foreclosure of the Assessment Lien does not discharge the Unit Owner from liability for any portion of the Unit Owner's monetary obligations to the Association which is not satisfied out of the proceeds from such foreclosure sale (the "Deficiency") and suit to recover a money judgment for such Deficiency shall be maintainable by the Association against such Unit Owner, subject to any applicable restrictions or requirements set forth in Section 51.002 of the Texas Property Code.

F. A Unit Owner may not petition a court to set aside a foreclosure sale, whether judicial or nonjudicial, solely because the purchase price at the foreclosure sale was insufficient to satisfy the Unit Owner's debt.

G. At any time before a nonjudicial foreclosure sale, a Unit Owner may avoid foreclosure by paying all amounts due the Association, including all attorneys' fees and costs incurred in connection with the foreclosure.

H. If a Unit Owner defaults in his monetary obligations to the Association, the Association may notify other lien holders of the default and the Association's intent to foreclose its Assessment Lien. The Association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a Unit who has given the Association a written request for notification of the Unit Owner's monetary default or the Association's intent to foreclose its Assessment Lien.

I. If a Unit Owner is delinquent in payment of any Assessments, Special Assessments, fees, fines, charges or other obligations due to the Association, at the request of the Association the holder of a recorded lien against a Unit may provide the Association with information about the Unit Owner's debt secured by the holder's lien against the Unit and other relevant information. At the request of a lien holder, the Association may furnish the lien holder with information about the Project and the Owner's obligations to the

Association. No such exchange of information concerning a Owner's obligations between the Association and the holder of a lien against the Owner's Unit shall ever be grounds for a claim of defamation, invasion of privacy or any other tort on behalf of the Owner against the Association or the lien holder, unless the information concerning the Owner's obligations was patently false and exchanged with malicious intent to injure the Owner.

J. Any holder of a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, and upon such payment, such holder shall have a lien on such Unit for the amount paid of the same rank as the lien of his encumbrance.

K. Foreclosure of a senior lien, as defined in subparagraph A of this Section, shall not discharge the Association's Assessment Lien against a Unit for Assessments, Special Assessments, fees, fines and other amounts becoming due to the Association after the date of foreclosure of such senior lien.

L. If a Unit is purchased by the Association at a foreclosure sale of the Association's Assessment Lien, the Owner thereof may redeem the Unit not later than the ninetieth (90<sup>th</sup>) day after the date of the foreclosure sale. To redeem the Unit, the Owner must pay to the Association all amounts due the Association at the time of the foreclosure sale, interest from the date of the foreclosure sale to the date of redemption at the rate of ten percent (10%) per annum, reasonable attorneys' fees and costs incurred by the Association in foreclosing the Assessment Lien, any Assessment, Special Assessment, fee, fine, charge, late charge or other amount levied against the Unit by the Association after the foreclosure sale, and any reasonable cost incurred by the Association as Owner of the Unit, including costs of maintenance and leasing. On redemption, the Association shall execute a deed, without warranty, to the redeeming Unit Owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming Unit Owner records the deed from the Association or an affidavit stating that the Unit Owner has exercised the right of redemption. A Unit that has been redeemed remains subject to all liens and encumbrances which were of record against the Unit before foreclosure the same as though the foreclosure never took place. All rents and other income collected from the Unit by the Association from the date of the foreclosure sale to the date of redemption belong to the Association, but the rents and income shall be credited against the redemption amount. The Association purchasing a Unit at a sale foreclosing its Assessment Lien may not transfer ownership of the Unit during the redemption period to a person other than the redeeming Unit Owner.

M. The Assessment Lien shall also extend to the rents and insurance proceeds received by the Unit Owner and relating to the Owner's Condominium Unit. Upon a Unit Owner's default in the payment of its obligations to the Association for Assessments, Special Assessments, fees, fines, charges, late charges or other amounts levied against the Unit by the Association, the Association may enforce the Assessment Lien against rents and insurance proceeds by delivering written notice by United States certified mail, return receipt requested,

to the tenant or insurance carrier obligated to pay such rents or insurance proceeds to pay such rents or insurance proceeds directly to the Association to be applied against the Unit Owner's obligations. The Association may, alternatively, enforce the Assessment Lien against rents and insurance proceeds in any other manner provided by law.

#### ARTICLE VI INSURANCE

**Section 6.1 Property and Multi-Peril Insurance - Common Elements.** The Association shall obtain and maintain at all times, to the extent reasonably available, property insurance on the insurable Common Elements and Units insuring against all risks of direct physical loss or damage commonly insured against, including fire, vandalism, malicious mischief or such other hazards as are covered under standard extended coverage provisions, and against such other hazards and for such amounts as the Board may deem advisable, for the full insurable replacement cost of the Common Elements and the Units, including fixtures, 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, each Unit Owner and all Mortgagees of the Units as the insureds. As used in this Section 6.1, the term "Fixtures" shall be defined to include all improvements and betterments in the Common Elements and as originally constructed and/or installed to the individual Units, including all plumbing fixtures (bathtubs, showers, sinks, commodes, disposals, etc.), all interior walls, partitions and cabinets, all electrical and utility lines, pipes, ducts, wiring, and systems, all air conditioning and heating equipment, ducts and lines, all lighting fixtures, and all built-in appliances originally installed and all replacements thereof, including, but not limited to, and by way of example, all dishwashers, ovens, stoves, refrigerators, washers and dryers.

**Section 6.2 Liability Insurance.** The Association shall keep a comprehensive policy or policies of public liability insurance covering the Common Elements with a contractual liability endorsement, and such policy or policies shall include a "Severability of Interest Endorsement" or equivalent coverage which will preclude the insurer from denying the claim of an Owner because of negligent acts by the Association, the Board or another Owner or Owners. Such policy or policies shall be in amounts of not less than One Million Dollars (\$1,000,000.00) per person, One Million Dollars (\$1,000,000.00) per accident and One Million Dollars (\$1,000,000.00) property damage, plus an umbrella policy for not less than Five Million Dollars (\$5,000,000.00) for all claims for personal injury, including death, and/or property damage arising out of a single occurrence; and the policy shall include water damage liability, liability for property of others and such other coverage as is customarily deemed necessary with respect to projects similar in nature.

#### Section 6.3 - General Provisions.

A. In addition, each policy or policies shall identify the interest of each Owner, and shall provide (1) for a standard, noncontributory mortgage clause in favor of each First Mortgagee and the Association, (2) for a waiver of the insurer's right to subrogation under the policy against an Owner, the Association or their respective servants, agents, tenants or guests, (3) that no action or omission of an Owner, unless within the scope of the Owner's

authority on behalf of the Association, will void the policy or be a condition to recovery thereunder, and (4) that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

B. Each Owner irrevocably designates the Association, as Attorney in Fact, to administer and distribute such proceeds as is elsewhere provided in this Declaration. A claim for any loss covered by the policies maintained by the Association must be submitted and adjusted by the Association.

C. All insurance policies maintained by the Association shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days prior written notice to each First Mortgagee, and may not be canceled by the insurance company nor may the insurance company refuse to renew until after thirty (30) days written notice to the Association. The Board shall, upon request of any First Mortgagee, furnish a certified copy of each blanket policy and a separate certificate identifying the interest of the Mortgagor.

**Section 6.4 Fidelity Bonds and Liability Insurance for the Board.** The Association shall keep a policy or policies of (i) fidelity insurance complying with the requirements of the Federal National Mortgage Association; (ii) worker's compensation as required under the laws of the State of Texas, and (iii) such other insurance as may be deemed reasonable and necessary in order to protect the Project, the Owners and the Association.

**Section 6.5 Owner's Insurance.** Notwithstanding the provisions of Sections 6.1, 6.2 and 6.3 above, each Owner shall be responsible for obtaining primary insurance upon said Owner's Unit. Said insurance shall include all fixtures, installations, improvements or additions thereto contained within the unfinished interior surfaces of the perimeter walls, floors and ceilings of such Unit, as initially installed or replacements thereof, including, but not limited to, plumbing fixtures, lighting fixtures, and built-in appliances installed in the Unit. The Association shall not be responsible for procurement or maintenance of any insurance covering the liability of any Owner not caused by or connected with the Association's operation or maintenance of the Project. Each Owner shall obtain such insurance at his own expense for his own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner and casualty and public liability insurance coverage within each Unit are specifically made the sole responsibility of each Owner, and each Owner must furnish a copy of his insurance policy to the Association. The individual Owner's insurance policies need not cover any aspect of the Common Elements, but must be the primary policy for coverage involving damage to an individual policy for coverage involving damage to an individual Unit where there is no, or de minimis, damage to Common Elements.



**ARTICLE VII**  
**DESTRUCTION AND RECONSTRUCTION**

**Section 7.1 Determination of Necessity of Reconstruction or Repair.** If any part of the Project shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

**A. Special Meeting.** Within fifteen (15) days from the date of such casualty, the Board shall call a special meeting of the Association, such meeting of the Association to be held not less than five (5) days from the date of such notice, nor more than forty (40) days following the date of such casualty. Notice of this meeting shall be sent to Owners and Eligible Mortgagees. Such notice shall be in writing and personally delivered or mailed, certified, return receipt requested, to each Owner and Eligible Mortgagee and shall state the date, time and place of the meeting of the Association to be held, and the purpose of the meeting which shall be to determine, in accordance with the Act, whether the Project shall be terminated or reconstructed.

**B. Determination of Obligation to Repair and Replace.** At the meeting of the Association called for the purpose set out above, a vote shall be taken to determine whether the part of the Project damaged by casualty shall be repaired or replaced. Any portion of the Project for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the Association unless the Project is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or Owners holding at least eighty percent (80%) of the Allocated Interests, including each Owner of a Unit, or assigned Limited Common Element that will not be repaired or replaced (the "Required Owner Consent") vote not to rebuild.

**C. Effect of a Vote Not to Repair or Replace.** If the Required Owner Consent not to rebuild is obtained, or if the Project is terminated, or the repair or replacement would be illegal under any state or local health or safety statute or ordinance, then all insurance proceeds shall be paid by the Association to the affected Owners and their respective First Mortgagees, in accordance with their respective Allocated Interests.

**D. Mandatory Repair & Replacement.** If the Required Owner Consent is not obtained, unless the Project is terminated or repair and replacement would be illegal under any state or local health or safety statute or ordinance, then, in that event, the Board shall proceed with the reconstruction, repair and replacement of the Project, in accordance with the provisions hereinafter set out and the insurance proceeds, if any, shall be applied to such reconstruction, repair and replacement.

**Section 7.2 Plans and Specifications for Reconstruction.** All reconstruction, repair and replacement must be substantially in accordance with the original plans and specifications for the original improvements and facilities constituting the Project, or, if the same be not available, then

according to plans and specifications approved by a vote of a majority of the Allocated Interests, as well as the consent of each Owner and his First Mortgagee whose Unit and/or Limited Common Elements appurtenant thereto are affected by such deviation from the original plans and specifications.

**Section 7.3 Responsibility of the Owner and the Association.** If the damage is only to those parts of one (1) Unit for which the responsibility of maintenance and repair is that of the Owner, all insurance proceeds shall be paid to the Owner or Owners, or their respective Mortgagee or Mortgagees, of such Unit, as their respective interests may appear, and, so long as repair or replacement is not prohibited or has not been disapproved as contemplated at **Section 7.1E**, above, such Owner or Owners, or their respective Mortgagee or Mortgagees, shall use the same to rebuild or repair such Unit in accordance with the original plans and specifications therefor. If such damage extends to two or more Units, or extends to any part of the Common Elements or Common Areas, such insurance proceeds shall be held by the Association for the benefit of the Owners and their respective Mortgagees as their respective interests may appear. The Board shall thereupon contract to repair or rebuild the damaged portions of all such Units, the Building and the Common Elements in accordance with the original or approved plans and specifications therefor and the insurance proceeds shall be used for this purpose.

**Section 7.4 Board to Obtain Estimates.** Immediately after a determination to rebuild, repair or replace damage to the Project for which the Association has the responsibility of repair and replacement, the Board shall obtain reliable and detailed estimates of the cost to rebuild, repair or replace.

**Section 7.5 Assessments for Construction in Case of Insufficient Insurance Proceeds.** If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the cost thereof are insufficient, assessments shall be made (1) against the Owners who own the damaged Units in the case of damage to only a Unit(s) as described in **Section 7.3**, and (2) against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Owners for damage to their respective Units, as described in **Section 7.3**, shall be in the proportion that the cost of reconstruction and repair bears to the total cost of reconstruction and repair. Such assessments on account of damage to Common Elements shall be in the same proportion as each Unit Owner's Allocated Interest. All assessments made pursuant hereto may be enforced in accordance with any other provision hereof relating to regular Assessments and are secured by the Assessment Lien.

**Section 7.6 Distribution of Remaining Funds After Reconstruction.** If there is a balance of funds, including insurance proceeds and assessments, if any, after payment of all costs of reconstruction and repairs for which funds were collected, such balance shall be distributed to the beneficial Owners thereof and their respective Mortgagees, as their interests may appear, in the following manner:

A. To the Owners of damaged Units, such distribution shall be in the proportion that the cost of rebuilding and repairing such Owner's Unit bore to the total cost of reconstruction; and

B. To all Unit Owners, with respect to damage to the Common Elements, the balance shall be distributed in accordance with their respective Allocated Interests; and

**Section 7.7 Property Not Reconstructed: Distribution of Insurance Proceeds; Sale of Property and Termination of Declaration.** If the Association has determined not to repair or replace such damaged property pursuant to the Required Owner Consent, then, after the insurance proceeds have been delivered to the Owners and their Mortgagees, as their interests may appear, in proportion to the Allocated Interest of each Owner, the Association, as soon as reasonably possible and as Attorney in Fact for the Owners, shall sell the entire Project, in its then condition, free from the effect of this Declaration, which shall terminate upon such sale (provided that such termination is approved by Owners holding at least eighty percent (80%) of the Allocated Interests and Eligible Mortgagees holding mortgages on Units representing at least fifty-one percent (51%) of the Allocated Interests), on terms satisfactory to the Association, and the net proceeds of such sale, after the payment of all remaining debts and expenses of the Association, shall thereupon be distributed to the Owners or their Mortgagees, as their interests may appear, in accordance with the Owners' respective Allocated Interests.

**Section 7.8 Partition in the Event of the Association's Failure to Sell.** If the Owners should not rebuild, pursuant to the above provisions, and the Association fails to consummate a sale pursuant to Section 7.7 above within twenty-four (24) months after the destruction or damage occurs, then the Association shall, or if it does not, any Owner or Mortgagee may, with the approval of all remaining Mortgagees, record a sworn statement in the Condominium Records and Deed Records describing the Project and setting forth such decision and reciting that under the provisions of this Declaration the condominium form of ownership and the Project has terminated and the prohibition against judicial partition contained in the Act, in this Declaration has terminated, and that judicial partition of the Project may be obtained pursuant to the laws of the State of Texas. Upon final judgment of a court of competent jurisdiction decreeing such partition, this Declaration shall be null and void and of no further force and effect. The provision of this Section can be amended only by the unanimous written consent of the Owners.

#### ARTICLE VIII. EMINENT DOMAIN

**Section 8.1 - General Provisions.** If all or any part of the Project is taken or threatened by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give such notice as it receives of the existence of such proceeding to all Owners and to all Mortgagees known to the Board to have an interest in any Unit. The expense of participation in such proceedings by the Association shall be borne as a Common Expense by all Owners. The Association is specifically authorized to obtain and pay for such

assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association, as Attorney in Fact for the Owners, and such damages or awards shall be applied or paid as provided in Section 8.4 hereinbelow.

**Section 8.2 Taking of Common Elements.** In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Unit), the Association, in the addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking of Common Elements only, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be deposited with the Association, as Attorney in Fact for the Owners, to be applied and paid as provided in Section 8.4 hereinbelow. The Association may, if it deems advisable, call a meeting of the Owners, at which meeting the Owners, by a vote of eighty percent (80%) of the Allocated Interests, as well as the consent of all Owners and the Mortgagees whose Limited Common Elements were affected by such damage or taking, may decide to terminate the Project rather than to replace or restore as far as possible the Common Elements so taken or damaged.

**Section 8.3 Taking of Units.**

A. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the condemnation award must compensate the Owner for the Unit, its Allocated Interest in and to the Common Elements, whether or not any interest in the Common Elements is acquired. On acquisition, unless the decree provides otherwise, the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of the remaining Units before the taking. The Association shall promptly prepare, execute and record amendments to this Declaration reflecting the reallocations. A remnant of a Unit remaining after part of a Unit is taken by condemnation is a Common Element.

B. Except as provided in Paragraph A of this Section 8.3, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its Allocated Interest in the Common Elements. On acquisition, the condemned Unit's Allocated Interest shall be reduced in proportion to the reduction in the size of the Unit, and the portion of the Allocated Interest divested from the partially acquired Unit shall be automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

**Section 8.4 Payment of Awards and Damages.**

**A. Common Elements.** The damages or award for the taking or damage to a portion or all of the Common Elements shall be apportioned between the Unit Owners and their respective Mortgagees, as their interests may appear on the basis of their Allocated Interests in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, one (1) such account for each Unit. However, any portion of the damages or award attributable to the acquisition of a Limited Common Element must be apportioned to the Unit Owner of the Unit to which such Limited Common Element was assigned. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of the Unit Owner. From each separate account, the Association, as Attorney in Fact, shall use and disburse the total amount of each such account, without contribution from one (1) account to another for the costs of any reconstruction or replacement of the Common Elements, then, to the extent there are any remaining funds in the accounts, as provided in Paragraph D of this Section 8.4.

**B. Units.** The damages or award for the taking or damage to a Unit shall be apportioned between the Owner of such Unit and his Mortgagees as their respective interests may appear, in proportion to which the damage or taking of such Unit bears to the total property taken or damaged (including other Units and Common Elements), and such apportioned proceeds shall be paid into a separate account for each such Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Unit and the name of its Owner. From each such account, the Association, as Attorney in Fact, shall use and disburse the total amount of each such account, without contribution from one (1) account to another, for the cost of any reconstruction necessary to make the Unit habitable unless such Unit cannot be made habitable, with the balance, if any being disbursed as provided in Paragraph D of this Section 8.4.

**C. Merger and Sale of the Property.** In the event of the termination of the Project resulting in the regrouping and merger of the undivided interests of the Owners into a single estate and subsequent sale of the Project, the damages or award for the taking or damage to, as well as the proceeds from the sale of, the Project (including Units and Common Elements) shall be apportioned among all the Owners in the manner provided in Paragraph A of this Section 8.4.

**D. Disbursement.** After payment of all costs and expenses of reconstruction and replacement as may be required under the terms of this Declaration, the separate accounts established under Paragraphs A, B, or C of this Section 8.4 shall be used and disbursed by the Association, as Attorney in Fact, and without contribution from one (1) such account to another, for the following purposes and in the following order:

- (1) For payment of taxes and special assessment liens in favor of any governmental assessing entity;
- (2) For payment of the balance of the lien of any duly recorded mortgage instrument;

- (3) For payment of any unpaid Assessments;
- (4) For payment of any junior liens and encumbrances in the order and extent of their priority; and
- (5) The balance remaining, if any, shall be paid to the respective Owner.

**Section 8.5 Amendment to the Plat.** Any such taking, damage, replacement, restoration and/or reconstruction of any portion of the Project, whether a Unit or Common Element, shall be reflected on an amended Plat of the Project; except in the event of a regrouping and merger of the undivided interests of the Owners into a single estate and subsequent sale of the Project. Such amended Plat shall be filed in the Condominium Records of Dallas County, Texas.

#### **ARTICLE IX TERMINATION**

**Section 9.1 Manner of Termination.** The Project may be terminated in either of the following manners, in addition to any other manner provided by the Act:

**A. Destruction.** In the event it is determined in the manner provided in Articles VII or VIII hereinabove that the Project shall not be reconstructed because of major damage or condemnation, the Project will be thereby terminated pursuant to, and in accordance with, the provisions of Article VII or Article VIII; provided that such termination is approved by Owners holding at least eighty percent (80%) of the Allocated Interests and Eligible Mortgagees holding mortgages on Units representing at least fifty-one percent (51%) of the Allocated Interests.

**B. Agreement.** The Project may be terminated at any time by the approval, in writing, of all of the Owners and their respective Mortgagees.

**Section 9.2 Certification of Termination.** Except as provided in Section 7.8 hereinabove, the termination of the Project in the foregoing manner shall be evidenced by an instrument in writing subscribed and acknowledged by the requisite number of Owners and Mortgagees electing to terminate requesting the County Clerk of Dallas County, Texas, to regroup or merge the records of the filial estates in the Project, provided the filial estates are unencumbered or, if encumbered, provided that all of the creditors in whose behalf the encumbrances are recorded shall agree to accept, as security, the undivided portions of the Project owned by the Owners, which agreement shall be evidenced by an instrument in writing subscribed by each of the creditors and properly acknowledged.

**Section 9.3 Title After Termination.** If the Project is not to be sold following termination, the Owners shall own the Project and all assets of the Association as tenants in common in undivided shares, and their respective Mortgagees and lienors shall have Mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be determined based on the fair market value of the Owner's Unit, Limited Common Elements, if

applicable, and interests in the Common Elements immediately before the termination, as determined by an independent appraiser selected by the Association. The decision of the independent appraiser shall be distributed to the Owners and becomes final unless disapproved by Owners holding twenty-five percent (25%) of the Allocated Interests not later than the thirtieth (30<sup>th</sup>) day after the date of distribution. The proportion of an Owner's interest to that of all Owners is determined by dividing the fair market value of the Owner's Unit and interest in the Common Elements and/or Common Areas by the total fair market values of all the Units and Common Elements (the "FMV Interests"). In the event a Unit or Limited Common Element is destroyed to the extent that an appraisal of the fair market value before the destruction cannot be made, the interest of the Owner is the Owner's Allocated Interest immediately before the termination. If the Project is to be sold following termination, on termination title to the Project shall vest in the Association as trustee for the holders of all interests in the Units.

**Section 9.4 Sale of the Project.** In the event the Project is to be sold following termination, the Association, as Attorney in Fact for all Owners, may contract for the sale of the Project, provided, however, the contract shall not be binding upon the Owners until it is approved: (a) in the case of a termination pursuant to Section 9.1A above, by Owners holding at least eighty percent (80%) of the Allocated Interests and Eligible Mortgagees holding mortgages on Units representing at least fifty-one percent (51%) of the Allocated Interests; or (b) in the case of a termination pursuant to Section 9.1B above, by all of the Owners and their respective Mortgagees. Until the sale has been concluded and the proceeds distributed, the Association shall continue to exist and retains all powers it had before the termination including the power to collect Assessments and Special Assessments and to enforce the Assessment Lien. Unless the termination agreement specifies differently, until the sale has been concluded and the proceeds distributed, each owner and the Owner's successors in interest have an exclusive right to occupy their Unit. The proceeds of the sale must be distributed to the Owners and their Mortgagees as their interests may appear, in proportion to the respective FMV Interests of the Owners as determined in accordance with Section 9.3 above.

**Section 9.5 Project Not to be Sold Upon Termination.** In the event the Project is not to be sold following termination, on termination title to the Project vests in the Unit Owners as tenants in common in proportion to their respective FMV Interests, and the liens on the Units shift accordingly. While the tenancy in common exists, each Owner and the Owner's successors in interest shall have an exclusive right to occupy the portion of the real property that formerly constituted such Owner's Unit.

**Section 9.6 Distribution of Association Assets Upon Termination.** Following termination of the Project, and after payment of or provision for the claims of the Association's creditors, the assets of the Association shall be distributed to the Owners in proportion to their respective FMV Interests. The proceeds of the sale of the Project, as set forth in Section 9.4 above, are not assets of the Association, and shall be held by the Association as Trustee to be distributed in accordance with the provisions of Section 9.4.

**Section 9.7 Foreclosure of a Master Mortgage.** Foreclosure or enforcement of a lien or encumbrance against the entire Project does not of itself terminate the Project, and foreclosure or

enforcement of a lien or encumbrance against a portion of the Project does not withdraw that portion from the Project, unless the mortgage being foreclosed was recorded before the date this Declaration was recorded and the Mortgagee did not consent in writing to this Declaration.

**Section 9.8 Reinstatement After Termination.** By agreement of the same percentage of Owners that is required to terminate the Project, the Owners may rescind a termination agreement and reinstate and this Declaration in effect immediately before the election to terminate. To be effective, the rescission agreement must be in writing, executed by the Owners who desire to rescind the termination, and recorded in the Official Condominium Records of Dallas County, Texas.

**Section 9.9 Amendment.** This Article IX concerning termination cannot be amended without the consent of all the Owners and their respective Mortgagees.

#### ARTICLE X. AMENDMENTS

**Section 10.1 Amendment Procedure.** This Declaration may be amended in the following manner, as well as in the manner elsewhere provided herein:

**A. Proposal.** A resolution for the adoption of an amendment may be proposed by either the Board or an aggregate number of Owners representing ten percent (10%) of the Allocated Interests in the Common Elements. Such resolution shall be considered at a regular meeting of the Association or a special meeting of the Association called for such purpose.

**B. Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. Owners not present at the meeting or meetings considering such proposed amendment may express their vote by proxy duly registered with the Secretary of the Association before or at such meeting.

**C. Owner Approval.** Except as otherwise provided herein, an amendment to the Declaration considered at such meeting or meetings must be approved by not less than an aggregate of Owners representing sixty-seven percent (67%) of the Allocated Interests; provided, however, that the amendment procedures of Section 82.067 of the Act shall not apply to amendments of the types described in Section 82.067(b) of the Act.

**D. Mortgagee Approval.** Except as otherwise provided herein as to certain amendment requiring a higher approval percentage, any material amendment to the Declaration shall also require the approval of Eligible Mortgagees holding mortgages on Units representing at least fifty-one percent (51%) of the Allocated Interests. A change to any of the provisions governing the following matters shall be considered material:

1. Voting rights.



2. Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment Liens, or the priority of Assessment Liens.
3. Reductions in reserves for maintenance, repair and replacement of Common Elements.
4. Responsibility for maintenance and repairs.
5. Reallocation of interests in the General or Limited Common Elements, or rights to their use.
6. Redefinition of any Unit boundaries.
7. Convertibility of Units into Common Elements or vice versa.
8. Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project.
9. Hazard or fidelity insurance requirements.
10. Imposition of any restrictions on the leasing of Units.
11. Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit.
12. Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration.
13. Any provisions that expressly benefit Mortgagees or insurers or guarantors of mortgages on the Units.

**Section 10.2 Proviso.** It is further provided that no amendment shall discriminate against any Owner nor against any Unit or class or group of Units, unless the Owners so affected shall consent; and no amendment shall change, alter or take away any Unit, the Limited Common Elements appurtenant thereto, or such Allocated Interest of an Owner, nor increase such Owner's share of the Common Expenses unless the record Owner of the Unit concerned and his Mortgagee shall join in the execution of such amendment.

**Section 10.3 - Mortgage Consent.** As to any proposed amendment which requires the consent of any Mortgagee of one (1) or more Units pursuant to the terms of this Declaration, or the Act, written notice of such proposed amendment shall be sent to such Mortgagee or its designated representative, by certified mail, return receipt requested, together with a ballot for such Mortgagee to signify its objection or consent to the proposed amendment. Failure of such Mortgagee to file with

the Secretary of the Association notice of its objection to any such proposed amendment within thirty (30) days of the date the notice of the proposed amendment was sent, shall be deemed to signify the consent of such Mortgagee to the proposed amendment.

**Section 10.4 Execution and Recording.** No amendment shall be effective until recorded in the Office of the County Clerk of Dallas County, Texas. The holders of Mortgages on the Units may, at their election, designate a representative or representatives (not to exceed three in number) to act upon any and all amendments to this Declaration and if such representative or representatives are designated and written notice thereof is given to the Board by registered or certified mail addressed to the office of the Association, then any amendment to this Declaration requiring the approval of such Mortgagee shall require the approval in writing of said representative or a majority of said representatives. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the Officers of the Association and acknowledged as in the case of a deed.

#### ARTICLE XI. PROTECTION OF MORTGAGEES

**Section 11.1 Notice of Association.** An Owner who mortgages his Unit shall notify the Association, giving the name and address of his Mortgagee. Each Mortgagee shall be permitted to notify the Association of the fact that such Mortgagee holds a deed of trust or mortgage on a Unit. The Board shall maintain such information in a book entitled "Mortgagees of Units".

**Section 11.2 Notice of Default; Lapse in Insurance.** The Association shall notify a First Mortgagee in writing, upon written request of such Mortgagee identifying the name and address of the Mortgagee and the Unit number, of any default by the mortgagor in the performance of such mortgagor's obligations, as set forth in this Declaration, which is not cured within sixty (60) days. The Association, upon written request, shall also notify a First Mortgagee of (a) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (b) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage; and (c) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

**Section 11.3 Examination of Books.** The Association shall permit First Mortgagees to examine the books and records of the Association upon request.

**Section 11.4 Annual Financial Statements.** Upon written request the Association shall furnish each First Mortgagee an annual financial statement of the Association, reviewed by an independent certified public accountant, within ninety (90) days following the end of each fiscal year of the Association.

**Section 11.5 Notice of Meetings.** The Association shall furnish each First Mortgagee upon request of such Mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such Mortgagee to attend such meetings, one (1) such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

**Section 11.6 Change in Documents.** Upon written request, the holder of any mortgage covering any of the Units shall be entitled to written notification from the Association thirty (30) days prior to the effective date of any change in this Declaration, or the Bylaws.

**Section 11.7 Taxes, Assessments and Charges.** All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

**Section 11.8 Certain Sales/Rights of Eligible Mortgagees.** The approval of Eligible Mortgagees holding mortgages on Units representing at least fifty-one percent (51%) of the Allocated Interests shall be required as a condition to any sale of the Property as contemplated at Article VII, or as contemplated at Article VIII.

## ARTICLE XII. MISCELLANEOUS PROVISIONS

**Section 12.1 Rights of Action.** The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners who fail to comply with the provisions of this Declaration, the Bylaws or the Rules or with the decisions of the Association. Unit Owners shall also have a right of action against the Association for failure to comply with the provisions of this Declaration, the Bylaws or the Rules.

**Section 12.2 Right of Ingress and Egress.** Each Unit Owner shall have an unrestricted right of ingress and egress to his or her Unit. This right shall run with the title to the Unit and shall be conveyed with the Unit upon any transfer of ownership thereof. Any conveyance, encumbrance, judicial sale or other transfer, voluntary or involuntary, of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

**Section 12.3 Correction of Error.** Declarant reserves, and shall have the continuing right, until the end of the Declarant Control Period, without the consent of the other Owners or any Mortgagee, to amend this Declaration, or the Bylaws for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of the Act, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration or Federal Housing Administration, as allowed by law.

**Section 12.4 Ownership of Common Personal Property.** Upon termination of the Declarant Control Period, as defined herein, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the Project, furnished by Declarant, and intended for the common use and enjoyment of the Owners and occupants. Such personal property shall be

deemed to be part of the Common Elements. 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 ownership of his Unit.

**Section 12.5 Notice.** 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 Unit number and Building address of such Owner's Unit, unless written notification of a different address is filed with the Board. All notices, demands or other notices intended to be served upon the Board or the Association shall be sent by ordinary or certified mail, postage prepaid, to 501 Elm Street, Suite 375, Dallas, Texas 75202, until such address is changed by a notice of address change duly recorded in the Dallas County Records.

**Section 12.6 Conflict Between Declaration and Bylaws.** Whenever the provisions of this Declaration conflict with any provision of the Bylaws adopted by the Association, the provisions of this Declaration shall prevail. Whenever the provisions of this Declaration conflict with any provision of the Act, the provisions of the Act shall prevail.

**Section 12.7 Invalidation of Parts.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

**Section 12.8 Omissions.** In the event of the omission from this Declaration of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof, or any part thereof, then such omitted matter shall be supplied by inference and/or by reference to the Act.

**Section 12.9 Texas Uniform Condominium Act.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

**Section 12.10 Gender.** That whenever used herein, unless the context shall otherwise provided, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY HEREAFTER]

IN WITNESS WHEREOF, the Declarant has caused to be signed as of the 24th day of June, 1999, though not necessarily executed on that date.

501 ELM PLACE PARTNERS, LTD., a Texas limited partnership

By: Collinternational I, Inc., a Texas corporation,  
General Partner

By: [Signature]  
Gary A. Briel, Vice President

THE STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 24th day of June, 1999, by Gary A. Briel, Vice President of Collinternational I, Inc., General Partner of 501 Elm Place Partners, Ltd., on behalf of said corporation and partnership.

[Signature]  
Notary Public State of Texas



EXHIBIT A (SHEET 1 OF 1)

BEING all of Lot 7 and Lot 8, City of Dallas Block 14/21 conveyed by Deed from Barker Nichols Group, Inc. to 501 Elm Place Partners, Ltd. as recorded in Volume 96201, Page 30, Dallas County Deed Records which lies above an elevation of 452.1 feet; and being more particularly described as follows:

COMMENCING at an "X" found for corner at the intersection of the west right-of-way line of Record street (80' R.O.W.) and the north right-of-way line of Elm Street (80' R.O.W.), said point being the southeast corner of said Lot 8, said point being at an elevation of 430.6 feet;

THENCE vertically 21.5 feet to the Point of Beginning (elevation = 452.1 feet);

THENCE North 89 degrees 21 minutes 27 seconds West, 100.00 feet to a point for corner;


THENCE North 00 degrees 30 minutes 11 seconds East, 100.00 feet to a point for corner;

THENCE South 89 degrees 21 minutes 27 seconds East, 100.00 feet to a point for corner;

THENCE South 00 degrees 30 minutes 11 seconds West, 100.00 feet to the POINT OF BEGINNING and containing 10,000 square feet.

**\*BENCHMARK: (CITY OF DALLAS WATER DEPT.)  
 SQUARE CUT ON TOP OF CURB  
 INLET ON SOUTH SIDE OF ROSS AVE. AND  
 EAST SIDE OF RECORD STREET  
 ELEVATION = 429.16'**

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|  |   |  |             |
|--|---|--|-------------|
|  <b>Jones &amp; Boyd, Inc.</b><br>2800 Dallas Parkway, Suite 240<br>Dallas, Texas 75228<br>Tel: 972-348-7878<br>Fax: 972-348-1434 | <b>CONDOMINIUM SURVEY</b>                           |  | PROJECT NO. |
|  | LEGAL DESCRIPTION 808 ELM STREET<br>RESIDENCE TRACT |  | C03501      |
|  | <b>808 ELM STREET RESIDENCES</b>                    |  | SHEET NO.   |
|  | CITY OF DALLAS, DALLAS COUNTY, TEXAS                |  | 2 of 8      |

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EXHIBIT "B" TO  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR 509 ELM PLACE RESIDENCES,  
A CONDOMINIUM

**BYLAWS FOR 509 ELM PLACE RESIDENCES  
A CONDOMINIUM**

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**BYLAWS OF  
509 ELM PLACE RESIDENCES  
A CONDOMINIUM**

**ARTICLE I.  
NAME, OFFICES AND PURPOSE**

Section 1. The name of the corporation is 509 Elm Place Residences Association, Inc., hereinafter referred to as the "Association."

Section 2. The principal office of the Association shall be located at 501 Elm Street, Suite 375, Dallas, Texas 75202.

Section 3. The Association shall have and continuously maintain, in the State of Texas, a registered office, and a registered agent whose office is identical with such registered office as required by the Texas Non-Profit corporation Act. The registered office may, but need not, be identical with the principal office of the Association in the State of Texas, and the registered office and registered agent may be changed from time to time by the Board of Directors.

Section 4. The Association may have such other offices, either within or outside of the State of Texas, as the Board of Directors may determine or as the affairs of the Association may require from time to time. The Board of Directors may change the location of any office of the Association.

Section 5. 509 Elm Place Residences, A Condominium (the "Project") shall be administered by the Association. The Association shall be responsible for the management, supervision, maintenance, operation and administration of the Project in accordance with the Declaration (as hereinafter defined), these Bylaws, the Articles of Incorporation, the Rules and Regulations (collectively, the "Condominium Documents") and the laws of the State of Texas. This Association is, and shall have all of the powers described in the Texas Uniform Condominium Act, being Section 82.001 et seq., Property Code, Vernon's Texas Code Ann. (the "Act").

**ARTICLE II  
DEFINITIONS**

The words "Association," "Project," "Common Elements," "Allocated Interests," "Unit," "Owner," "Declarant," and any other capitalized term not specifically identified herein when used in these Bylaws, unless a different meaning or intent clearly appears from the context, shall have the same meaning as they have in that certain Declaration of Covenants, Conditions and Restrictions for 509 Elm Place Residences, A Condominium, as amended from time to time (the "Declaration"), dated

as of June 24, 1999, and to be recorded in the Deed Records, Dallas County, Texas, which Declaration is incorporated herein by reference of all purposes. In the event of any conflict between these Bylaws and the Declaration, the Declaration shall control.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Upon becoming an Owner, each Owner shall automatically become a member ("Member") of the Association and shall remain a member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association shall also automatically cease, and no other person or entity shall be entitled to membership in the Association, except as expressly provided herein or in the Declaration. No Owner shall be required to pay any consideration whatsoever solely for his or her membership in the Association.

Section 2. The share of an Owner in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his or her Unit. Upon any transfer of ownership of any Unit, the new Owner acquiring or succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association.

Section 3. Each Owner shall be entitled to a vote, the value of which shall equal the total of the Allocated Interests assigned to the Units owned by such Owner as set forth in the Declaration; provided, however, that any Owner who has been given notice that he or she is in violation of the Condominium Documents, whether by virtue of a delinquency in payment of Assessments or otherwise, shall not be entitled to vote at any meeting of the Association (unless otherwise required by the Act) until such default has been cured.

Section 4. No Owner, other than Declarant shall be entitled to vote at any meeting of the Association until such Owner has presented evidence of ownership of a Unit to the Association (and written proxy if voting by proxy) The vote of each Owner may only be cast by such Owner or by a written proxy given by such Owner to his or her duly authorized representative. An Owner may not revoke a proxy except by giving actual notice of revocation to the person presiding over the meeting of the Association. A proxy is void if it is not dated or if it purports to be revocable without notice. In addition, a proxy shall terminate one (1) year after its date unless it specifies a shorter or longer time. Voting shall not be split among more than one (1) Owner of a Unit. At any meeting of the Owners, the multiple Owners of a Unit present at the meeting shall provide the Board a written designation as to which of said multiple Owners of such Unit shall be entitled to cast the vote on behalf of such Unit. If only one (1) of such multiple Owners of a Unit is present at a meeting of the Owners, it shall be conclusively presumed that such single Owner of such Unit has the authority to cast the vote on behalf of such Unit, and no other multiple Owner of such Unit may later complain of any action taken by the Association on which such single Owner voted in favor of as the representative of such Unit. Declarant or its representative may exercise all the votes allocated to the unsold Units while same are owned by Declarant.

**Section 5.** The rights of membership are subject to the payment of Assessments levied by the Association, together with such interest thereon and costs of collection thereof as provided in the Declaration. Such Assessments shall be a charge on the Unit and shall be a continuing lien upon each Unit against which each such Assessment is made and shall be a continuing personal obligation of the Owner of such Unit at the time when the Assessment fell due.

**Section 6.** The voting rights or any Member and right of any Member to use or enjoy the Common Elements may be suspended by action of the Directors during the period when such Assessments against the Unit owned by such Member remains unpaid, but, upon payment of such Assessments, his or her rights and privileges shall be automatically restored. If, at any time, the Directors shall have adopted and published rules and regulations governing the use of the Common Elements and facilities, and the personal conduct of Members, their families and their guests, as provided in the Declaration, the Board may, in its discretion, for violation of such rules and regulations by a Member or by his or her family or guests, suspend the rights of such Member and/or the person committing the violation, such suspension not to exceed sixty (60) days.

**Section 7.** Any action required by law, to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

#### **ARTICLE IV. DIRECTORS**

**Section 1.** The initial number of Directors has been set by the Articles as three (3). The Declarant shall retain control of and over the Association, through the appointment of the Board, until the earlier to occur of the following: (a) one hundred twenty (120) days following the closing of the sale of seventy-five percent (75%) of the Units in the aggregate to third parties, (b) three (3) years after the date the first Unit is conveyed to a third party, or (c) when in the sole opinion and discretion of the Declarant, the Project becomes viable, self-supporting and operational ("Declarant Control Period"); provided, however, that no later than the one hundred twentieth (120<sup>th</sup>) day after the closing of the sale of fifty percent (50%) of the Units in the aggregate to third parties, not less than one-third (1/3rd) of the members of the Board must be elected by Owners other than Declarant. Within thirty (30) days prior to the end of the Declarant Control Period, the Declarant shall call an annual meeting of the Association for the purpose of electing, by ballot of the Owners, a Board of Directors and to transact such other business of the Association as may properly come before it.

**Section 2.** Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor

in office. Any directorship to be filled by reason of any increase in the number of the Directors shall be filled at an annual meeting of the Members or at a special meeting of the Members entitled to vote called for that purpose.

Section 3. Any Director may be removed from the Board of Directors, with or without cause, by the affirmative vote of seventy-five percent (75%) of the total Allocated Interests at an annual meeting of the Members or at a special meeting of the Members entitled to vote called for that purpose. Until the first meeting of the Members (with or without cause), and thereafter only with cause, a majority of the Board of Directors may remove a member of the Board of Directors. In addition, the Board of Directors shall have the power and authority to declare the office of a member of the Board of Directors to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors.

Section 4. The business and affairs of the Association shall be managed by its Board of Directors which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute, by the Articles of Incorporation ("Articles"), by these Bylaws or by the Declaration directed or required to be exercised and done by the Members. The powers and duties of the Board of Directors shall be as set forth in these Bylaws and the Declaration.

Section 5. To the fullest extent permitted by applicable law, the Directors shall not be liable to the Association of any mistake in judgment (except for breach of fiduciary duty or intentional misconduct) or negligence in the performance of duty. The Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that any Member may be liable therefor), and the Association shall indemnify and forever hold such Director free and harmless against any and all liability to others or account of such contract or commitment. The Association shall indemnify any Director or former Director against expenses actually and necessarily incurred by him or her and any amounts paid in satisfaction of judgments in connection with any action, suit or proceeding, whether civil or criminal in nature, in which he or she is made a party by reason of being or having been a Director, except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for breach of fiduciary duty or intentional misconduct in the performance of such duty. The Association may also reimburse any Director for the reasonable costs of settlement of any such action, suit or proceedings, if it shall be found by a majority of the Directors not involved in the matter in controversy, whether or not a quorum, that it was in the interests of the Association that such settlement be made and that such Director was not guilty of breach of fiduciary duty or intentional misconduct. To the extent available at a reasonable cost, the Association shall secure director's and officer's liability insurance.

Section 6. No contract or other transaction between the Association and any of the Directors or between the Association and any corporation, firm or association (including Declarant) in which any Director is pecuniarily or otherwise interested (including, without limitation, any management contract), is either void or voidable because any such Director is present at the meeting of the Board which authorizes or approves the contract or because his or her vote is counted for such purpose, i

either (i) the fact of the common interest is disclosed or known to a majority of the Board or noted in the minutes and the Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; (ii) the fact of the common interest is disclosed to at least a majority of the Members and the Members approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or (iii) the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed. Any interested Director may be counted in determining the presence of a quorum at any meeting of the Board which authorizes, approves or ratifies any contract or transaction and may vote with like force and effect as if such Director was not so interested.

**ARTICLE V.  
MEETINGS OF THE BOARD OF DIRECTORS**

**Section 1.** The Board of Directors shall meet each year immediately following the annual meeting of the Members for the transaction of such business as may be properly brought before it. No notice of annual meetings need be given to either old or new members of the Board of Directors.

**Section 2.** Regular meetings may be held at such other times as shall be designated by the Board of Directors. No notice of regular meetings of the Board is required other than a resolution of the Board of Directors stating the time and place of the meetings.

**Section 3.** Special meetings of the Board of Directors shall be held when called by the President or by any Director. The person or persons calling a special meeting shall notify the Secretary of the information required to be included in the notice of the meeting. Written notice of special meetings of the Board of Directors shall be given to each Director not less than three (3) nor more than fourteen (14) days before the day of the meeting. The notice shall state the place, day and time of the meeting, who called the meeting, and the purpose or purposes for which the meeting is called.

**Section 4.** All meetings of the Board of Directors shall be open to all Owners, subject to the right of the Board of Directors to adjourn a meeting and reconvene in closed session to consider actions involving personnel, pending litigation, contract negotiations, enforcement action, matters involving the invasion of privacy of Owners, or matters that are to remain confidential by the request of the affected parties and agreement of the Board of Directors. The general nature of any business to be considered in closed session shall be announced at the open meeting.

**Section 5.** Meetings may be evidenced by unanimous written consent of the Board of Directors or held by telephone.

**Section 6.** A majority of the Directors then in office shall constitute a quorum for the transaction of business and the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless a greater number is required by the Articles. The Directors present at a duly called or held meeting at which a quorum is present may

continue to transact business even if enough Directors leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of Directors required to constitute a quorum. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 7. Notice of special meetings of the Board of Directors shall be given in writing by mail, telegram, facsimile, or by personal delivery to each Director at his or her address as shown by the records of the Association. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, by these Bylaws or by the Declaration.

Section 8. The vote of a majority of Directors present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the board of Directors unless the act of a greater number is required by law or these Bylaws. A Director who is present at a meeting and abstains from a vote is not considered to be present and voting for the purpose of determining the decision of the Board of Directors.

#### ARTICLE VI. NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination for election to the Board of Directors may be made by a Nominating committee. Nominations may also be made from the floor at the annual meeting of the Members. The Nominating Committee shall consist of two or more Directors of the Association. The Nominating Committee shall be appointed by the Board of Directors. The Nominating Committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine.

Section 2. Election to the Board of Directors shall be by secret written ballot at the annual meeting of the Members. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the Declaration.

#### ARTICLE VII. COMPENSATION OF DIRECTORS

The Directors of the Association shall serve without compensation. However, nothing herein shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.



**ARTICLE VIII.  
NOTICES**

**Section 1.** Notices to Members or Owners shall be in writing and shall be deemed to have been properly delivered when deposited in the United States mail addressed to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing, with postage thereon prepaid. A person may change his or her address by giving written notice to the Secretary of the Association.

**Section 2.** Whenever any notice is required to be given to any Member or Owner under the provisions of any statute or of the Articles of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the such notice.

**Section 3.** Attendance of any Member at a meeting shall constitute a waiver of notice of such meeting unless the Member attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**ARTICLE IX.  
OFFICERS**

**Section 1.** The officers of the Association shall consist of a President, one or more Vice Presidents, a Secretary and a Treasurer, each of whom shall be elected by the Board of Directors from among the members of the Board. The offices of Secretary and Treasurer may be held by the same person.

**Section 2.** The Board of Directors at its first meeting after each annual meeting of Members shall elect the officers of the Association. If the election of officers is not held at this meeting, the election shall be held as soon thereafter as conveniently possible. New offices may be created and filled at any meeting of the Board of Directors.

**Section 3.** Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the Board of Directors, none of whom need be Directors but shall be Members.

**Section 4.** All officers of the Association shall serve without compensation.

**Section 5.** Each officer of the Association shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors with or without good cause whenever in its judgment the best interests of the Association will be served thereby, but such

removal shall be without prejudice to the contract rights, if any, or the person so removed. Any vacancy occurring in any office of the Association by death, resignation, removal otherwise may be filled by the Board of Directors for the unexpired portion of the officer's term.

Section 6. The Board may delegate certain of its responsibilities or responsibilities of officers of the Association to a manager.

#### THE PRESIDENT

Section 7. The President shall be the chief executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. He or she shall preside at all meetings of the Members and of the Board of Directors, and shall be an ex officio member of all standing committees. The President shall be considered for all purposes as the Chairman of the Board. He or she may execute any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Association. In general, he or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

#### THE VICE PRESIDENT

Section 8. In the absence of the President or in the event of his or her inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any action taken by a Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability of the President to act at the time such action was taken. Any Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or Board of Directors.

#### THE SECRETARY

Section 9. The Secretary shall keep the minutes of the meetings of the members of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records; keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; and in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

### THE TREASURER

**Section 10.** If required by the Board of Directors, the Treasurer shall give a bond at the expense of the Association for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine. He or she shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board.

The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year. He or she shall prepare an annual budget and an annual balance sheet statement and the budget and balance sheet statement shall be presented to the membership at its annual meeting. He or she shall perform such other duties as from time to time may be assigned to him or her by the President or the Board of Directors.

### ARTICLE X. COMMITTEES

**Section 1.** The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, adopt a resolution establishing one or more committees, delegating specified authority to a committee, and appointing or removing members of a committee. The only standing committee of the Association shall be the Nominating Committee. Unless otherwise provided in the Declaration, each committee of the Association shall consist of two or more Directors. The establishment of a committee or the delegation of authority to it shall not relieve the Board of Directors, or any individual director, of any responsibility imposed by these Bylaws or otherwise imposed by law. Any such committee shall have and may exercise all of the delegated authority of the Board in the management of the business and affairs of the Association, except where action of the full Board is required by statute or the Condominium Documents. All committees shall keep regular minutes of their proceedings and shall report the same to the Board when requested to do so.

**Section 2.** The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting. The Nominating Committee shall have the duties and functions described in Article VI of these Bylaws.

**ARTICLE XI  
MEETINGS OF MEMBERS**

**Section 1.** All meetings of Members shall be open to all Owners and shall be held at the principal office of the Association, or at such place within the City of Dallas, Texas, as may be designated by the Board of Directors or the officer or Member(s) calling the meeting.

**Section 2.** The first meeting of Owners shall be held not later than one (1) year following the date of incorporation of the Association.

**Section 3.** Following the first meeting of Owners, there shall be annual meetings of the Owners at which the Board, or a portion thereof, shall be elected to the extent provided in the Condominium Documents. Special meetings of Owners shall be called by the President, a majority of the Directors or any individual Owners or collection of the Owners holding twenty percent (20%) of the total Allocated Interests. Notice of time, place and subject matter of all meetings shall be personally delivered or mailed to each Owner or to the individual representative designated by such Owner at the last address given by such Owner to the Association. If any Owner shall fail to give an address to the Association for the mailing of notices, all notices shall be personally delivered or mailed to the Unit of such Owner, and such Owner shall be deemed to have been given notice of any such meeting irrespective of actual receipt of the same.

**Section 4.** At the annual meeting of the Members, the following shall be the order of business:

- (a) Reading of the minutes of the last annual meeting of the Members;
- (b) President's report;
- (c) Secretary's and Treasurer's reports;
- (d) Election of Directors for the ensuing year to replace Directors whose terms have expired in accordance with the terms of the Declaration; subject, however, to the Declarant's right to appoint Directors during the Declarant Control Period as provided in the Declaration; and
- (e) Other business that may be properly brought before the meeting.

**Section 5.** Special meetings of the Members may be called at any time by the President or by the Board of Directors. Special meetings of Members may also be called by the Secretary upon written request of the Members who are entitled to vote twenty percent (20%) of the total Allocated Interests. Such request shall state the purpose or purposes of such meeting and the matters proposed to be acted on thereat.

**Section 6.** The Secretary shall keep at all times a current and complete list of the Members. Such list shall be arranged in alphabetical order, with the address of, and the Allocated Interest of, each such Member. Such list shall be kept on file at the office of the Association and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be present and kept open at the time and place of all meetings of Members; shall be available for inspection of any Member during the time of such meeting; and shall be prima facie evidence as to the identity of Members.

**Section 7.** Written notice of all special meetings and annual meetings stating the place, day and hour of the meeting, and the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) or more than fifty (50) days before the meeting to the then Members of record entitled to vote at such meeting, such notice shall be deemed to be properly delivered when deposited in the United States mail addressed to the last known address of the person who appears as a Member or the Owner on the records of the Association at the time of such mailing, with postage thereon prepaid. If all the Members meet and consent to the holding of a meeting, any action may be taken at the meeting regardless of a lack of proper notice.

**Section 8.** Except as otherwise provided by the Act, the Declaration, or these Bylaws, the presence in person or by proxy of Members holding fifty-one percent (51%) of the total Allocated Interests shall constitute a quorum at all meetings of Members for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the Owners, the Owners present in person or represented by proxy, shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present or presented. If a quorum shall be present or represented by proxy at such meeting held in lieu of the adjourned meeting(s), any business may be transacted at such meeting as originally notified. If any meeting at which Directors are to be elected is not attended by a quorum the incumbents shall be deemed re-elected.

**Section 9.** Except as otherwise provided by the Act, the Declaration or these Bylaws, when a quorum is present at any meeting of the Association, the vote of fifty-one percent (51%) or more of the Allocated Interests assigned to those Owners present, in person or proxy at such meeting shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the Act, the Declaration or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. The Owners present in person or by proxy at a duly organized meeting may continue to transact business until adjournment notwithstanding the withdrawal of enough Owners to leave less than a quorum.

**Section 10.** At any meeting of Members, votes may be cast in person or by proxy. Proxies must be in writing signed by the Owner granting same, and filed with the Secretary at or before the appointed time of each meeting of the Members of the Association. Voting on any question may be by voice vote or show of hands unless the presiding officer shall order, or any Member shall demand, that voting be by roll call or by written ballot.

Section 11. Cumulative voting shall not be permitted.

Section 12. Meetings of the Members shall be presided over by the President or, if he or she is not present, by any one of the Vice Presidents. The Secretary shall act as the Secretary of the meeting, if present.

#### ARTICLE XII. GENERAL PROVISIONS

Section 1. The fiscal year of the Association shall be the calendar year, unless otherwise determined by the Board of Directors.

Section 2. The Association may, but shall not be required to, have a corporate seal. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 3. All meetings of the Board and Members shall be conducted in accordance with Robert's Rules of Order, Newly Revised, except where inconsistent with the express language of the Articles, these Bylaws and/or the Declaration.

#### ARTICLE XIII. INDEMNIFICATION

Section 1. The Association shall indemnify, defend and hold harmless the Declarant, the Board and each director, officer, employee and agent of the Declarant, and from all judgments, penalties (including excise and similar taxes) fines, settlements and reasonable expenses (including attorney's fees) incurred by such indemnified person under or in connection with the Declaration or the Project to the fullest extent permitted by applicable law, such indemnity to include matters arising as a result of the sole or concurrent negligence of the indemnified party, to the extent permitted by applicable law; provided, however, such persons or entities shall be responsible (and the Association shall have no duty to indemnify, defend or hold harmless such person or entity) for (i) breaching a fiduciary duty to the Association or an Owner, (ii) receiving an improper benefit, or (iii) an act or omission performed in bad faith, involving intentional misconduct or for which liability is expressly provided by statute.

Section 2. If the Association has not fully indemnified him or her, the court in the proceeding in which any claim against such director or officer has been asserted, or any court having the requisite jurisdiction of any action instituted by such director or officer on his or her claim for indemnity, may assess indemnity against the Association, its receiver, or trustee, for the amount paid by such director or officer in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the Association), or any expenses and costs (including attorney's fees) actually

and necessarily incurred by him or her in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that the indemnity may be assessed under this Section only if the court finds that the person indemnified was not guilty of gross negligence or misconduct in respect of the matter in which the indemnity is sought.

#### ARTICLE XIV. BOOKS AND RECORDS

The Association or its agent shall keep or cause to be kept detailed books and records showing all expenditures and receipts or the administration of the Project which shall specify the maintenance and repair expenses of the Common Elements and any other expenses incurred by or on behalf of the Association and the Owners. Such books and records shall be open for inspection by the Owners during reasonable working hours on weekdays and shall be audited annually by qualified independent auditors in accordance with general accepted accounting principles within ninety (90) days after the end of any fiscal year of the Association, or as soon thereafter as practicable. The cost of such audit shall be a Common Expense, and copies of any such audit shall be made available to all Owners.

#### ARTICLE XV. ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay Assessments to the Association, together with such interest thereon and costs of collection thereof as provided in the Declaration, which shall be a charge on the Unit and shall be a continuing lien upon each Unit against which each such Assessment is made and shall also be the continuing personal obligation of the Owner of such Unit at the time when the Assessment fell due. Any Assessments which are not paid when due shall be delinquent. If any Assessment or part thereof, late charge or service charge is not paid when due, the unpaid amount of such Assessment, late charge or service charge shall bear interest from and after the date when due at the rate which is the lesser of ten percent (10%) per annum or the highest lawful rate, and the Association may, at its election, retain the services of an attorney for collection and there shall also be added, to the extent permitted by law, to the amount of such unpaid Assessment, late charge or services charge, any and all collection costs incurred hereunder by the Association, including reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the Assessments provided for in the Declaration by non-use of the Common Elements or abandonment of his or her Unit.

#### ARTICLE XVI. AMENDMENTS

Section 1. These Bylaws may be amended at a regular or special meeting of the Members, by a vote of at least sixty-seven percent (67%) of the total Allocated Interests; provided, however,

that any material amendments shall also require the approval of Eligible Mortgagees holding mortgages on Units representing at least fifty-one percent (51%) of the Allocated Interests. The matters listed in Section 10.1.D of the Declaration shall be considered material.

Section 2. In the case of any conflict between the Articles and these Bylaws, the Articles shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XVII.  
DISSOLUTION**

The Association may be dissolved only upon termination of the Project as provided in the Declaration.



99151 06482

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.  
STATE OF TEXAS COUNTY OF DALLAS  
I hereby certify this instrument was filed on the date and time stamped herein by me and was duly recorded in the volume and page of the public records of Dallas County, Texas as stamped herein by me.

JUN 28 1999



*Earl Blinks*  
COUNTY CLERK, Dallas County, Texas

EARL BLINKS  
COUNTY CLERK  
DALLAS COUNTY

99 JUN 28 AM 9:11

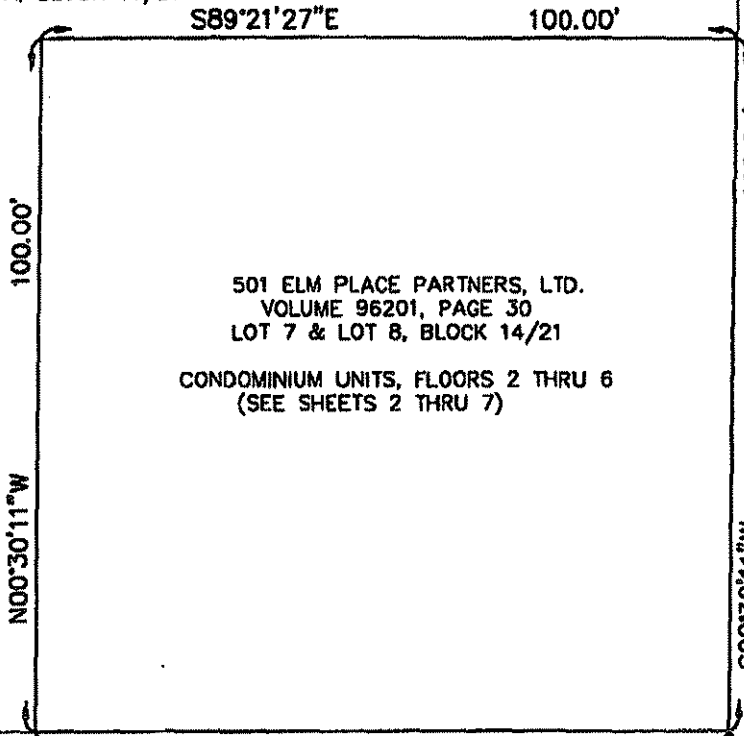
FILED

99125 00328

EXHIBIT "C" (SHEET 1 OF 8)

SCALE:  
1" = 20'

501 ELM PLACE PARTNERS, LTD.  
VOLUME 96106, PAGE 720  
LOT 1A, BLOCK 14/21



501 ELM PLACE PARTNERS, LTD.  
VOLUME 96201, PAGE 30  
LOT 7 & LOT 8, BLOCK 14/21  
CONDOMINIUM UNITS, FLOORS 2 THRU 6  
(SEE SHEETS 2 THRU 7)

RECORD STREET  
(80' R.O.W.)

N89°21'27"W 100.00'

ELM STREET  
(80' R.O.W.)

POINT OF BEGINNING  
(ELEV. = 452.1 feet;  
21.5 feet above street level)

BENCHMARK: (CITY OF DALLAS WATER DEPT.)  
SQUARE CUT ON TOP OF CURB INLET ON  
S. SIDE OF ROSS AVE & E. SIDE OF RECORD ST.  
ELEVATION = 429.16'



I HEREBY CERTIFY THAT OF JUNE 1, 1999, THIS SURVEY CONTAINS ALL THE INFORMATION REQUIRED OF PLATS AND PLANS UNDER SECTION 82.059 OF THE TEXAS UNIFORM CONDOMINIUM ACT, CHAPTER 82, TEXAS PROPERTY CODE.

DAN B. RAMSEY  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 4172  
STATE OF TEXAS

**Jones & Boyd, Inc.**  
15500 Dallas Parkway, Suite 240  
Dallas, Texas 75248  
Tel: 972-248-7878  
Fax: 972-248-1414

|                                      |  |             |
|--------------------------------------|--|-------------|
| CONDOMINIUM SURVEY                   |  | PROJECT NO. |
| PROJECT BOUNDARY                     |  | CO301       |
| 509 ELM STREET RESIDENCES            |  | SHEET NO.   |
| CITY OF DALLAS, DALLAS COUNTY, TEXAS |  | 1 of 8      |

99151 06483

**EXHIBIT C (SHEET 2 OF 8)**

BEING all of Lot 7 and Lot 8, City of Dallas Block 14/21 conveyed by Deed from Barker Nichols Group, Inc. to 501 Elm Place Partners, Ltd. as recorded in Volume 96201, Page 30, Dallas County Deed Records which lies above an elevation of 452.1 feet\* and being more particularly described as follows:

COMMENCING at an "X" found for corner at the intersection of the west right-of-way line of Record street (80' R.O.W.) and the north right-of-way line of Elm Street (80' R.O.W.), said point being the southeast corner of said Lot 8, said point being at an elevation of 430.6 feet;

THENCE vertically 21.5 feet to the Point of Beginning (elevation = 452.1 feet);

THENCE North 89 degrees 21 minutes 27 seconds West, 100.00 feet to a point for corner;


THENCE North 00 degrees 30 minutes 11 seconds East, 100.00 feet to a point for corner;

THENCE South 89 degrees 21 minutes 27 seconds East, 100.00 feet to a point for corner;

THENCE South 00 degrees 30 minutes 11 seconds West, 100.00 feet to the POINT OF BEGINNING and containing 10,000 square feet.

**\*BENCHMARK: (CITY OF DALLAS WATER DEPT.)  
 SQUARE CUT ON TOP OF CURB  
 INLET ON SOUTH SIDE OF ROSS AVE. AND  
 EAST SIDE OF RECORD STREET  
 ELEVATION = 429.16'**

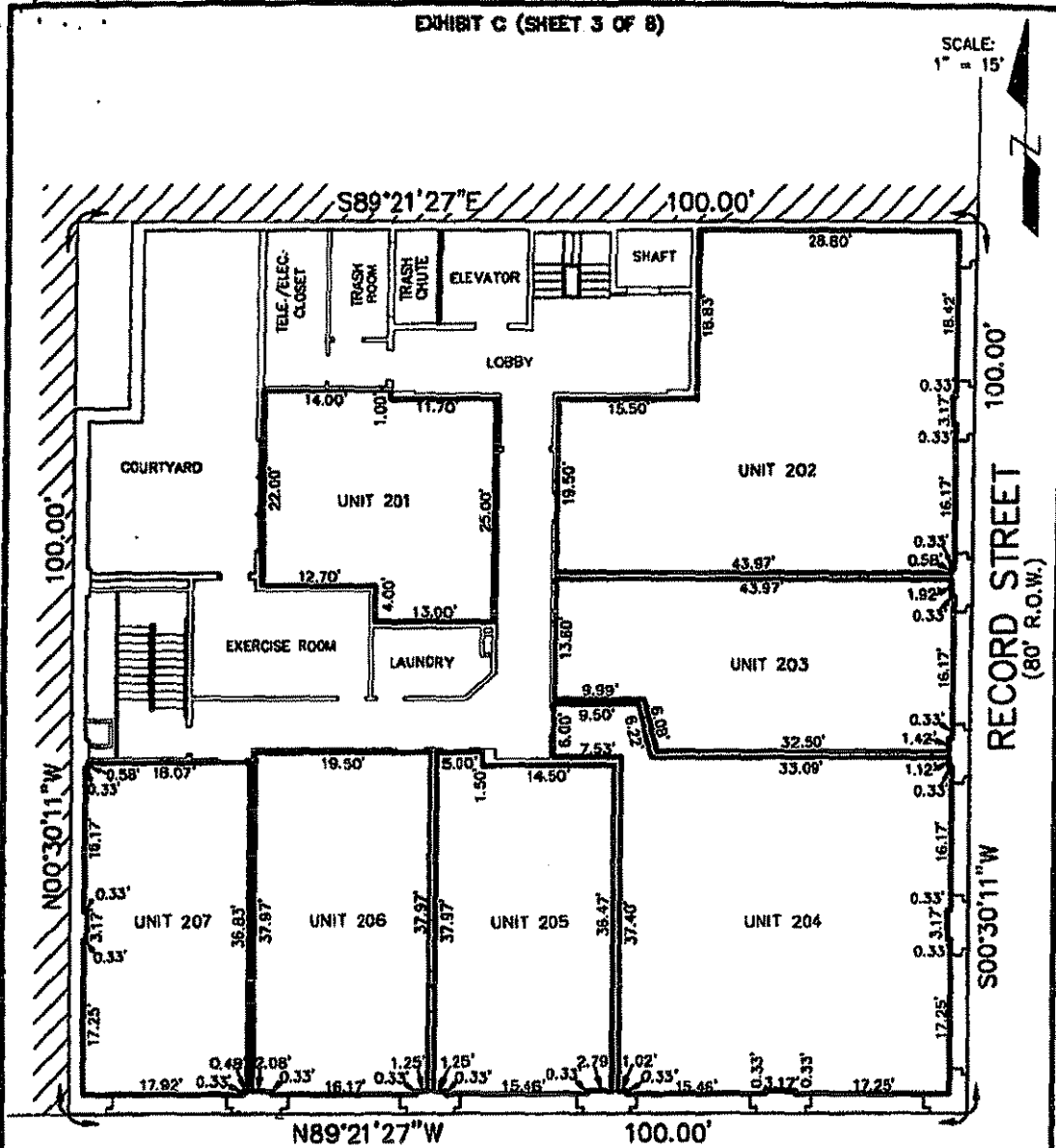
2011 W. V. ... 8/21/99 10 23 8"

|   |  |  |             |
|---|--|--|-------------|
|  <b>Jones &amp; Boyd, Inc.</b><br>10500 Dallas Parkway, Suite 240<br>Dallas, Texas 75248<br>Tel: 972-248-7070<br>Fax: 972-248-9156 | <b>CONDOMINIUM SURVEY</b>                        |  | PROJECT NO. |
|   | LEGAL DESCRIPTION 509 ELM STREET RESIDENCE TRACT |  | CO301       |
|   | <b>509 ELM STREET RESIDENCES</b>                 |  | SHEET NO.   |
|   | CITY OF DALLAS, DALLAS COUNTY, TEXAS             |  | 2 of 8      |

99151 06484

EXHIBIT C (SHEET 3 OF 8)

SCALE:  
1" = 15'



N89°21'27"W 100.00'

ELM STREET  
(80' R.O.W.)

FINISHED FLOOR ELEVATION = 452.1'  
FLOOR TO CEILING = 11.7'



**Jones & Boyd, Inc.**  
16800 Dallas Parkway, Suite 240  
Dallas, Texas 75248  
Tel: 972-248-7878  
Fax: 972-248-1414

CONDOMINIUM SURVEY

SECOND FLOOR UNITS

508 ELM STREET RESIDENCES

CITY OF DALLAS, DALLAS COUNTY, TEXAS

PROJECT NO.

C0301

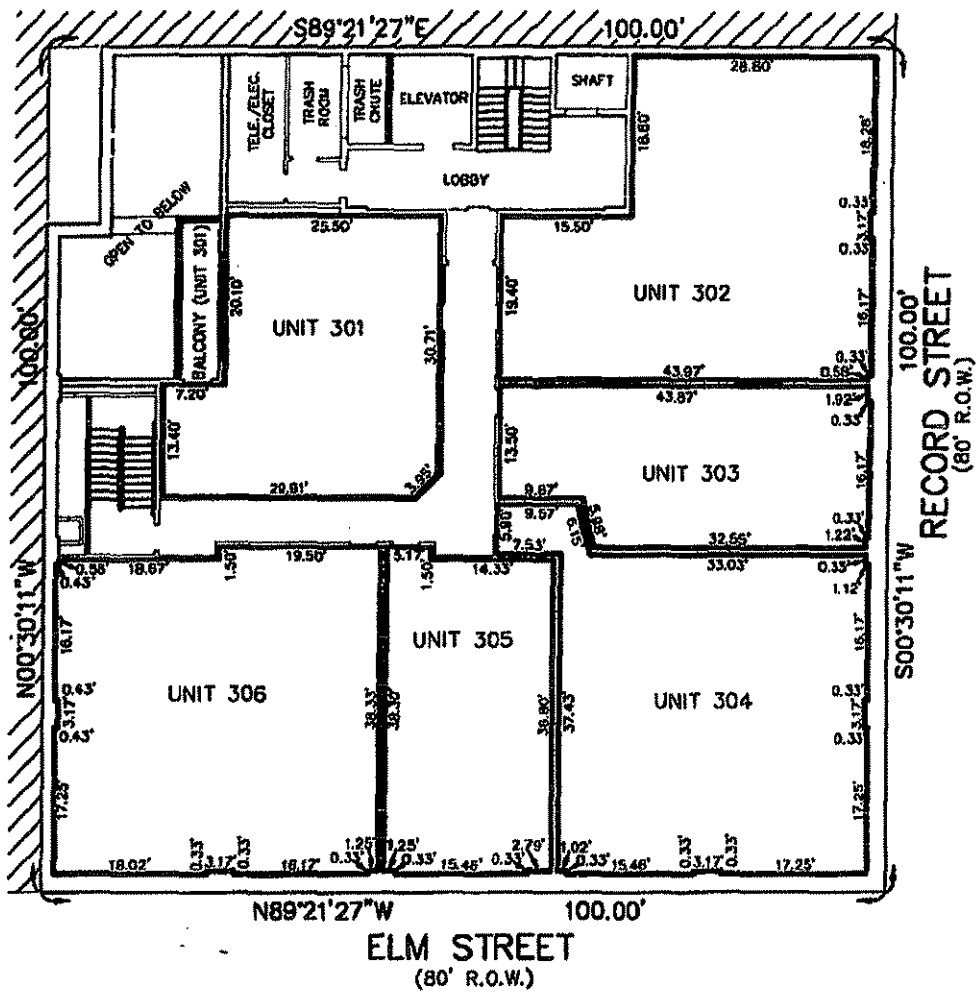
SHEET NO.

3 of 8

99151 06485

EXHIBIT C (SHEET 4 OF 8)

SCALE:  
1" = 15'



99151 06486  
 6/10/09 3:55 pm

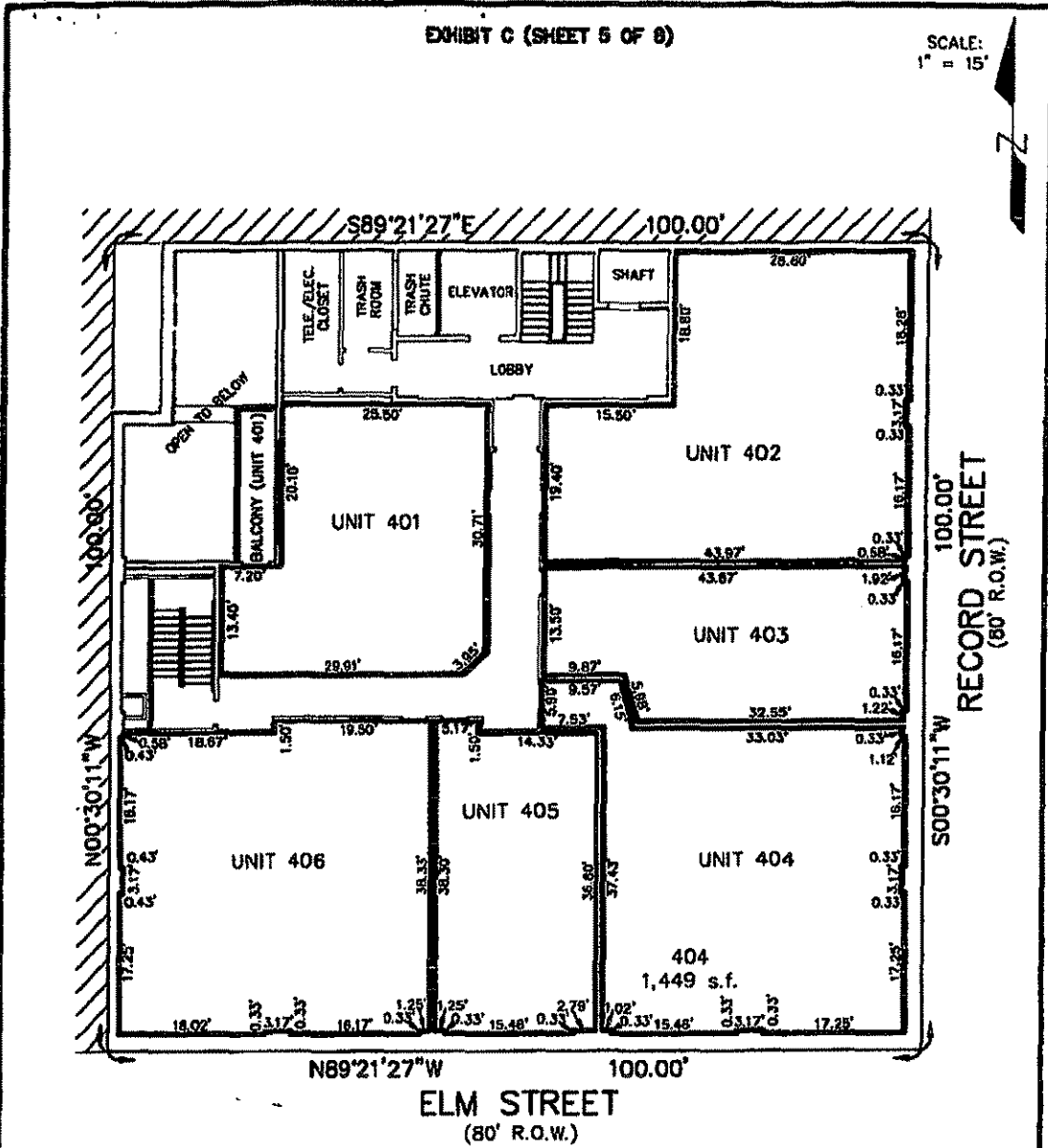
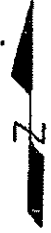
FINISHED FLOOR ELEVATION = 464.1'  
 FLOOR TO CEILING = 11.0'

|  |                                      |  |                      |
|--|--------------------------------------|--|----------------------|
| Jones & Boyd, Inc.<br>16900 Dallas Parkway, Suite 240<br>Dallas, Texas 75248<br>Tel: 972-348-7878<br>Fax: 972-248-1414 | <b>CONDOMINIUM SURVEY</b>            |  | PROJECT NO.<br>C0301 |
|  | <b>THIRD FLOOR UNITS</b>             |  | SHEET NO.<br>4 OF 8  |
|  | <b>509 ELM STREET RESIDENCES</b>     |  |                      |
|  | CITY OF DALLAS, DALLAS COUNTY, TEXAS |  |                      |


99151 06486

EXHIBIT C (SHEET 5 OF 8)

SCALE:  
1" = 15'



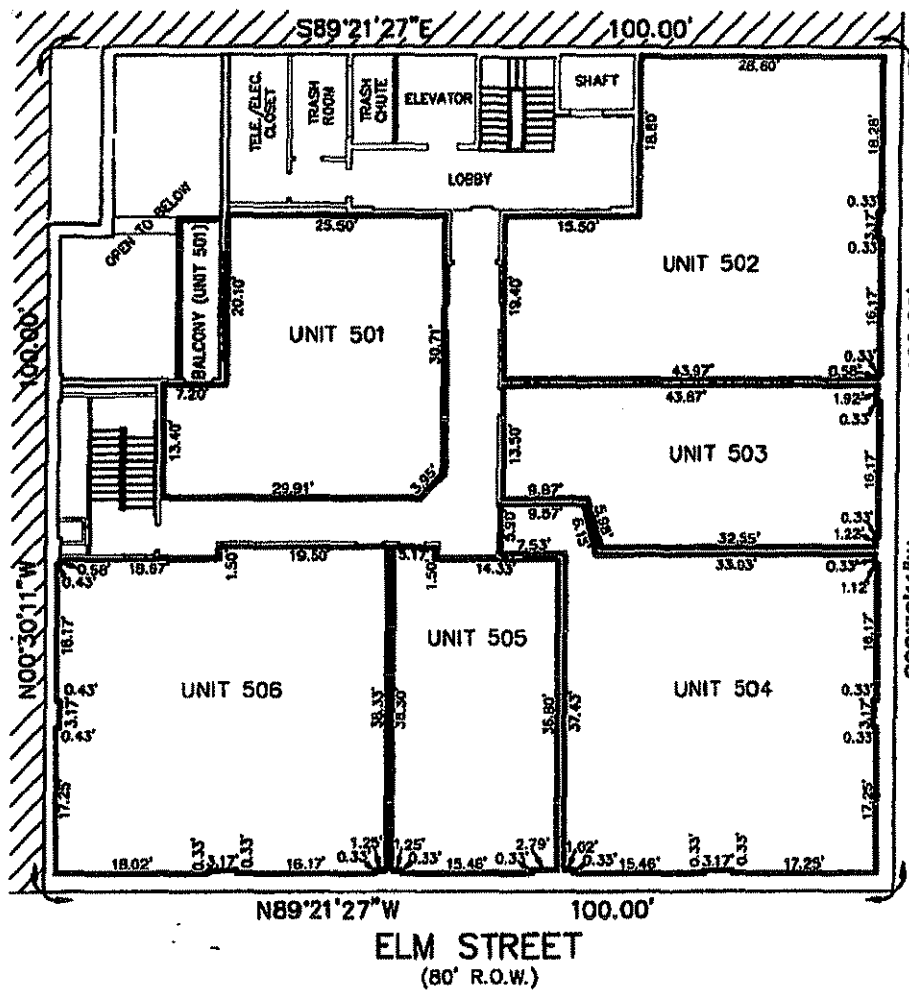
FINISHED FLOOR ELEVATION = 475.4'  
FLOOR TO CEILING = 11.0'

|   |                                      |  |             |
|---|--------------------------------------|--|-------------|
|  <b>Jones &amp; Boyd, Inc.</b><br>16800 Dallas Parkway, Suite 240<br>Dallas, Texas 75248<br>Tel: 972-248-7878<br>Fax: 972-248-1454 | <b>CONDOMINIUM SURVEY</b>            |  | PROJECT NO. |
|   | FOURTH FLOOR UNITS                   |  | CO301       |
|   | 509 ELM STREET RESIDENCES            |  | SHEET NO.   |
|   | CITY OF DALLAS, DALLAS COUNTY, TEXAS |  | 5 of 8      |

99151 06487

EXHIBIT C (SHEET 6 OF 8)

SCALE:  
1" = 15'



FINISHED FLOOR ELEVATION = 486.7'  
FLOOR TO CEILING = 11.0'

**Jones & Boyd, Inc.**  
 18000 Lillian Parkway, Suite 240  
 Dallas, Texas 75248  
 Tel: 972-248-7878  
 Fax: 972-248-4114

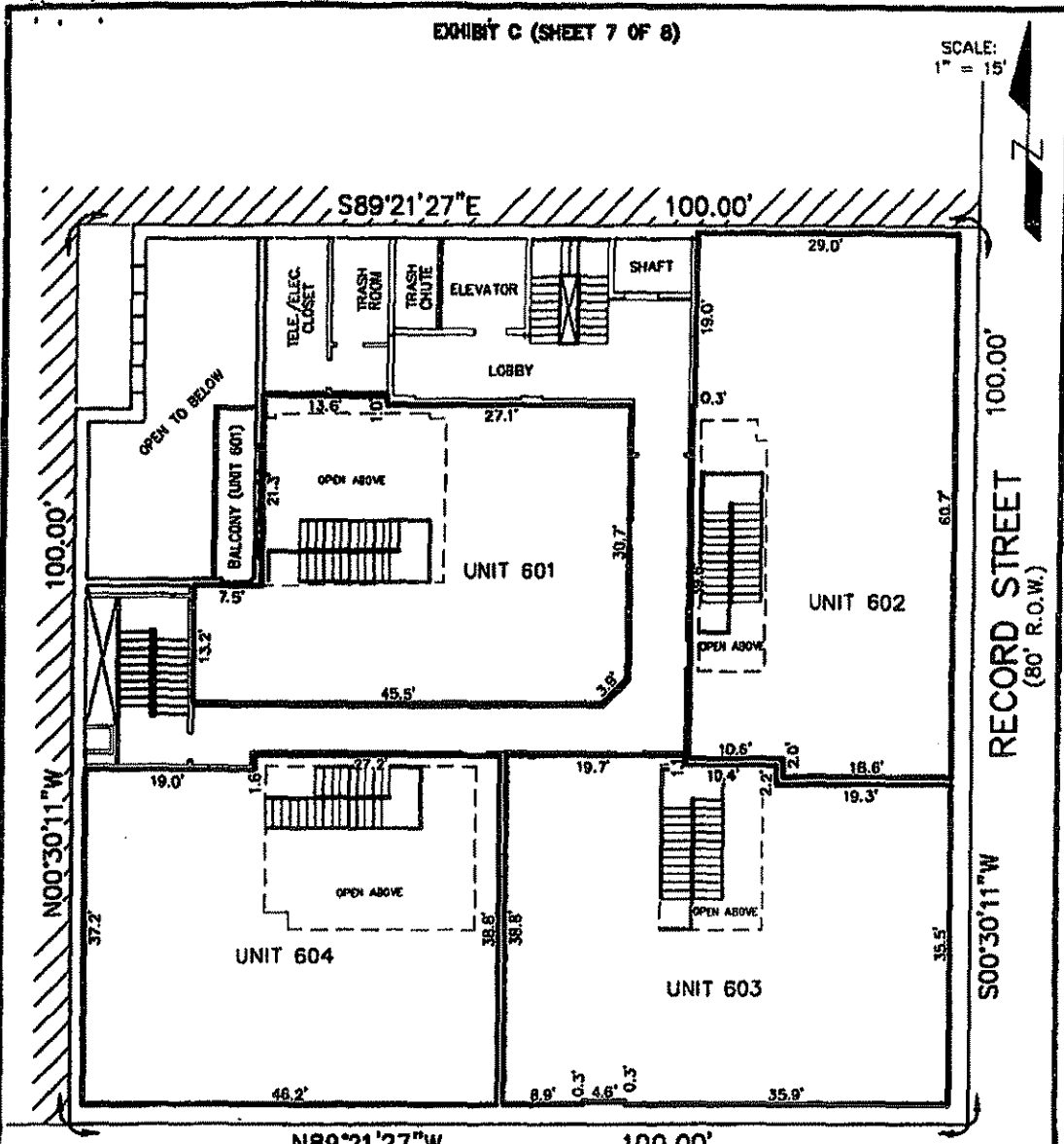
|                                      |  |             |
|--------------------------------------|--|-------------|
| <b>CONDOMINIUM SURVEY</b>            |  | PROJECT NO. |
| FIFTH FLOOR UNITS                    |  | C0301       |
| 509 ELM STREET RESIDENCES            |  | SHEET NO.   |
| CITY OF DALLAS, DALLAS COUNTY, TEXAS |  | 6 OF 8      |

99151 06400

DWG. BY: V. P. ... (03/20/01) (03/20/01) ... 0/10/08 3:58 PM

EXHIBIT C (SHEET 7 OF 8)

SCALE:  
1" = 15'



N89°21'27"W 100.00'

ELM STREET  
(80' R.O.W.)

FINISHED FLOOR ELEVATION = 498.0'  
FLOOR TO CEILING (2nd LEVEL) = 24.0'

|  |                                      |  |             |
|--|--------------------------------------|--|-------------|
| <p><b>Jones &amp; Boyd, Inc.</b><br/>16800 Dallas Parkway, Suite 240<br/>Dallas, Texas 75248<br/>Tel: 972-248-7878<br/>Fax: 972-248-1414</p> | <b>CONDOMINIUM SURVEY</b>            |  | PROJECT NO. |
|  | SIXTH FLOOR UNITS                    |  | CO301       |
|  | 509 ELM STREET RESIDENCES            |  | SHEET NO.   |
|  | CITY OF DALLAS, DALLAS COUNTY, TEXAS |  | 7 of 8      |

99151 06489

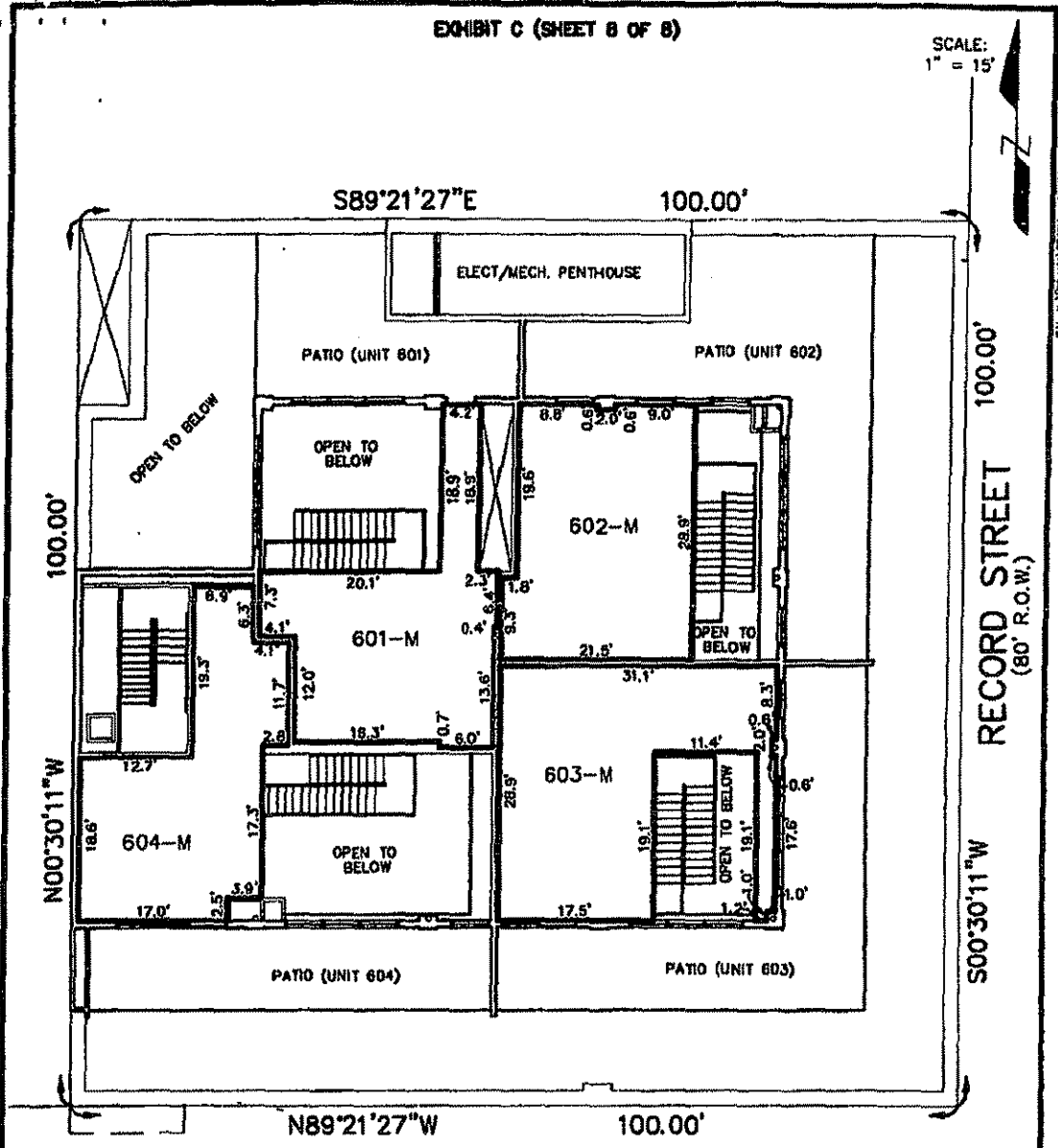


EXHIBIT C (SHEET 8 OF 8)

SCALE:  
1" = 15'



DATE: 11/19/98 PROJECT: 500 ELM STREET UNIT 601-604



ELM STREET  
(80' R.O.W.)

FINISHED FLOOR ELEVATION = 512.5'  
FLOOR TO CEILING = 9.6'

|  |                                      |  |             |
|--|--------------------------------------|--|-------------|
| <p><b>Jones &amp; Boyd, Inc.</b><br/>10500 Dallas Parkway, Suite 240<br/>Dallas, Texas 75248<br/>Tel: 972-248-7076<br/>Fax: 972-248-1414</p> | <b>CONDOMINIUM SURVEY</b>            |  | PROJECT NO. |
|  | <b>MEZZANINE LEVEL</b>               |  | 00301       |
|  | <b>500 ELM STREET RESIDENCES</b>     |  | SHEET NO.   |
|  | CITY OF DALLAS, DALLAS COUNTY, TEXAS |  | 8 of 8      |

99151 06490

**EXHIBIT "D"**

**Allocated Interests**

| <u>Unit Number</u> | <u>Allocated Interest</u> |
|--------------------|---------------------------|
| 201                | 1.64%                     |
| 202                | 3.86%                     |
| 203                | 2.19%                     |
| 204                | 4.02%                     |
| 205                | 2.03%                     |
| 206                | 2.08%                     |
| 207                | 1.92%                     |
| 301                | 2.86%                     |
| 302                | 3.86%                     |
| 303                | 2.19%                     |
| 304                | 4.02%                     |
| 305                | 2.03%                     |
| 306                | 4.01%                     |
| 401                | 2.86%                     |
| 402                | 3.86%                     |
| 403                | 2.19%                     |
| 404                | 4.02%                     |
| 405                | 2.03%                     |
| 406                | 4.01%                     |
| 501                | 2.86%                     |
| 502                | 3.86%                     |
| 503                | 2.19%                     |
| 504                | 4.02%                     |
| 505                | 2.03%                     |
| 506                | 4.01%                     |
| 601                | 5.67%                     |
| 602                | 6.42%                     |
| 603                | 6.71%                     |
| 604                | 6.55%                     |

**EXHIBIT "E"**

**Easements and Licenses**

1. **Terms, Conditions and Stipulations of that certain Unity Agreement by and between West End Historic Limited Partnership and Dallas West End Venture #3 dated May 7, 1987, filed May 12, 1987, recorded in Volume 87091, Page 6017 of the Deed Records of Dallas County, Texas.**
2. **Terms, Conditions and Stipulations of that certain Ordinance No. 15203 Agreement by and between City of Dallas and the public dated March 29, 1965, filed February 12, 1991, recorded in Volume 91030, Page 441 of the Deed Records of Dallas County, Texas.**
3. **Terms, Conditions and Stipulations of that certain Declaration of Reciprocal Easements Agreement and Declaration of Covenants and Restrictions for Elm Place dated as of June 24, 1999 and executed by 501 Elm Place Partners, Ltd. And 509 Elm Place Residences Association, Inc., a Texas non-profit corporation to be recorded in the Deed Records of Dallas County, Texas immediately prior to the recordation of this Declaration.**

991151 06492

FILED FOR RECORD  
 This 28 day of June 19 99 at 9:11 o'clock A M  
 Earl Bullock, County Clerk  
 Dallas County, Texas  
 Deputy

FILED FOR RECORD  
 This 3 day of Aug 19 99 at 11:10 o'clock P M  
 Earl Bullock, County Clerk  
 Dallas County, Texas  
 Deputy

Earl Bullock  
 COUNTY CLERK, DALLAS COUNTY, TEXAS



AUG 4 1999

Any person furnishing with records the name, number, or one of the described property because of loss or non-recovery and immediately upon receipt of such records, shall be liable and liable to pay the cost of such records. This notice is hereby given that the records of the County of Dallas, Texas, are being furnished to the person named herein by me, and are being recorded in the name and this notice of the record records of Dallas County, Texas, as stamped herein by me.

36490 151166