

(e) The failure or delay of the 509 Elm Commercial Owner 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.

(f) Assessments that are unpaid for over fifteen (15) days after the due date shall bear interest at the rate set forth at Section 9.4, below from the due date until paid.

(g) Common Facility Maintenance expenses shall be shared equally, one-third by the Owners of the Residence Tract (to be paid by and through the Association), one-third by the Owners of the 509 Elm Commercial Tract, and one-third by the Owners of the 501 Elm/Record Commercial Tract. The 509 Elm Commercial Owner may charge a reasonable fee to cover its costs and overhead incurred in connection with the operation and Maintenance of the Common Facilities in accordance herewith. Again, costs of maintaining the Residence Lobby shall be paid by the owners of the Residence Tract by billing directly to the Association. The Residence Lobby is not a Common Facility.

#### **ARTICLE IV COMPLIANCE WITH LAWS**

4.1 Compliance with Laws and Other Covenants. Each Owner shall own its Tract and operate it in compliance with all applicable Laws and with any private covenants or restrictions or covenants encumbering such Tract. No Owner shall give its permission to, or acquiescence in, the violation of any Laws or of any private covenants or restrictions (including those of this REA) by any Occupant.

4.2 Zoning Laws. Without the approval of all Owners, which may be withheld by any Owner in its reasonable discretion, no proceeding for a change in zoning classification, for a variance or special exception, or for any other change in any zoning Law affecting any Common Facility may be initiated or conducted, nor may any application, filing, public appearance, or other action in furtherance thereof be undertaken.

#### **ARTICLE V RIGHTS AND OBLIGATIONS OF OWNERS REGARDING CLOSURE AND DEMOLITION OF COMMON FACILITIES**

5.1 Common Facilities. Subject to the terms of this REA, nothing in this REA shall be deemed to require the 501 Elm/Record Owner to operate or maintain the 501 Elm/Record Commercial Tract, the 509 Elm Commercial Owner to operate or maintain the 509 Elm Commercial Tract or the Residence Owner to operate and maintain the Residence Tract, it being agreed that the

Owner of each respective Tract may close, discontinue, change its use to other than an its current use at any time. If any Owner desires so to close or discontinue operation of its Tract, it must do so in a manner which, both permanently and during such work, does not close, discontinue, prevent or materially interfere with or disrupt the use of Common Facilities located on its Tract by the other applicable Owners. Upon the closure or discontinuance of any Tract, the Owner of such Tract, at its sole cost and expense, must seal all openings into the other Tracts (other than openings into or from the Parking Facilities located on such Tract, and other openings which any other Owner desires to keep open, as set forth in written notice to the other Owners) in a manner that is architecturally compatible with the entrance into or from the other Tracts and which is approved in writing by the other applicable prior to commencement of such sealing. Subject to the preceding, the 501 Elm/Record Commercial Owner, the Residence Owner (upon the prior written approval of the 509 Elm Commercial Owner, which shall not be unreasonably withheld or delayed) and the 509 Elm Commercial Owner (upon the prior written approval of the Association, which shall not be unreasonably withheld or delayed), in connection with such closure or discontinuance, may elect to demolish the entirety (but not just a portion of) its the Common Facilities located on its Tract; provided, further, such demolition does not in any manner, as determined by the two Owners of Tracts in the 509 Parcel, with respect to demolition by the 501/Record Owner, or, with respect to demolition by any Owner in the 509 Elm Parcel, as determined by the other such Owner, adversely affect the structural soundness or integrity of the other Tracts.

## ARTICLE VI INSURANCE, CASUALTY AND CONDEMNATION

6.1 Insurance Policies. Each Owner shall carry fire and hazard insurance (with extended coverage endorsement) covering its Tract, as well as all personal property and equipment belonging to the such Owner and located therein or in any Tract owned by any of the other Owners, in an amount equal to the full insurable replacement value without deduction for depreciation. Coverage need not include land, foundation, excavations or other items usually excluded from insurance coverage. The policy shall also insure against all other perils covered by a standard "all risk" endorsement. When obtainable, the following special endorsements are required:

- (a) Agreed Amount and/or Inflation Guard Endorsement;
- (b) Increased Cost of Construction Endorsement; and
- (c) With respect to the Residence Tract, such endorsements applicable to condominiums as the Board of the Association may elect, including but not limited to:
  - (1) Condominium Property Form;
  - (2) Special Condominium Property Form;
  - (3) Additional Property Coverage;

(4) Optional Amendatory Endorsement; and

(5) Loss Caused by Water Which Backs up Through Sewers or Drains Endorsement.

Each Owner shall carry public liability insurance, including automobile and garage operations risk, with a combined single limit per occurrence coverage for bodily injury and property damage at least equal to \$1,000,000.00, with contractual liability coverage for its indemnity obligations under this REA to the extent insurable, and it shall include, without limitation, owned and non-owned automobile liability and water damage liability. All public liability insurance policies required under this Section 6.1 shall name each other Owner as additional insureds. All required policies shall be underwritten by carriers which are rated "A+" and Class XXI or better financial condition by Best's Key Rating Guide or an equivalent rating source, and which are licensed to do business in the State of Texas, or from such other insurance carriers as are acceptable to all Owners and shall contain an undertaking by the insurers to notify each other Owner in writing not less than thirty (30) days prior to any reduction in coverage, cancellation, termination, or other material change. All liability policies that cover multiple insured parties shall contain a provision stating that the policy will apply to each insured just as if a separate policy had been issued to each, except with respect to limits of liability. Certificates of insurance shall be delivered to each Owner as soon as possible after the placing of the required insurance, and renewal certificates shall be delivered not less than ten (10) days prior to the expiration of the previous certificates.

6.2 Waiver of Claims. Notwithstanding anything to the contrary contained in this REA, each Owner waives all claims and causes of action and rights of recovery against each other Owner for any loss or damage (even if caused by fault or negligence) that could be covered by insurance required hereunder (even if not actually so covered). The waivers contained in this Section 6.2 are effective regardless of the amount of any deductible under any policy of insurance. All required insurance policies shall contain appropriate provisions or endorsements effectuating the foregoing waiver.

6.3 Risk of Loss. No Owner shall have any liability to any other Owner for any injury, loss or damage to persons or property resulting from:

(a) Any defect or breakdown of any part of the Common Facilities owned by such Owner or its systems or equipment and not caused by such Owner's intentional misconduct or gross negligence.

(b) Any theft or burglary or any other loss or injury resulting from the presence of unauthorized persons on the Property.

(c) -Force Majeure.

6.4 Indemnity. Each Owner shall indemnify and hold each other Owner harmless against any loss, liability, damage, cost, or expense, or any claim therefor:

(a) Resulting to any extent from nonperformance or violation of any provision of this REA by that Owner.

(b) Resulting to any extent from any tax, fine, assessment, or other charge of any government or government agency related in any way to that Owner's business or to the violation of any Law by that Owner.

(c) Related in any way to any damage or injury to persons or property caused to any extent by the violation of any law, by the occupancy or use of that Owner of its Tract, or by any act or omission of that Owner.

The foregoing obligations shall not be affected by any negligent or other act or omission of the Owner indemnified. The indemnitees under this Section 6.4 are subject to the indemnified Owner's waiver of recovery contained in Section 6.2 to the extent of such Owner's recovery of loss proceeds under insurance policies described in Section 6.1.

**6.5 Casualty Damage.** If any Common Facility is damaged by a Casualty, the Owner of such Common Facility shall, to the extent reasonably possible, and as promptly as reasonably possible, restore the same to the condition in which it existed immediately prior to the Casualty, and shall do so whether or not proceeds of insurance are adequate for such purpose. The Owner of the damaged Common Facilities, in consultation with the other Owners, shall take reasonable steps to maintain the operation and function of the damaged Common Facilities to the extent feasible during the reconstruction. No Owner shall be liable to any other Owner as the result of any loss of access to or use of any Common Facilities resulting from any Casualty.

**6.6 Condemnation.** If all, substantially all or a portion of any Common Facility is taken by a Condemnation or conveyed in lieu thereof, this REA shall remain in full force and effect to the extent reasonably practical. All proceeds or awards of any Condemnation or sale in lieu of Condemnation shall be paid solely to the Owner of the Common Facility which was condemned regardless of any easements or other rights granted to another Owner to use portions of such Common Facility pursuant to the terms of this REA. If any part of any Common Facility is taken or conveyed in lieu of Condemnation, the Owner of the Tract affected by the Condemnation shall, as promptly as reasonably possible and to the extent feasible, restore its affected Common Facilities to the same functional and aesthetic condition as existed immediately prior to the taking or conveyance, and shall do so whether or not proceeds or awards from any Condemnation or sale in lieu of Condemnation are adequate for such purpose. If the Condemnation affects Common Facilities, the Owner of the Tract in which the affected Common Facilities are located shall, in consultation with the other Owners, take reasonable steps to maintain the operation and function of the affected Common Facilities to the extent feasible during and after the reconstruction. No Owner shall be liable to any other Owner as the result of any loss of access to or use of any Common Facilities resulting from any Condemnation.

**ARTICLE VII  
ALTERATIONS TO COMMON FACILITIES**

Alterations of the following type require the prior written consent of all Owners (to be exercised in its reasonable discretion):

- (a) The Alterations may adversely affect the structural integrity of any other Tract.
- (b) The Alterations might materially disturb or require the relocation, reconstruction, or removal of any Common Facilities, other than routine connections for which the Common MUS Facility is designed, or result in loads or demands on any Common MUS Facilities in excess of the designed load or capacity of the particular Common MUS Facility.

**ARTICLE VIII  
TRANSFERS**

8.1 Sale or Encumbrance of Tracts. Each Owner (including any owner of a Condominium Unit) shall be free to sell, convey, lease, place a Mortgage upon, or otherwise encumber, assign, or transfer ownership of its respective Tract, or Condominium Unit but any purchaser, grantee, lessee, Mortgagee, or other assignee or transferee shall take and hold its interest in such Tract, or Condominium Unit on and subject to the covenants, conditions, restrictions, easements, liens, charges, and equitable servitude in this REA.

8.2 Release of Former Owners. Upon the sale, conveyance, or other disposition of a Tract or any portion thereof, the former Owner shall have no further liabilities or obligations under this REA; provided, however, such sale, conveyance, or other disposition shall not release the former Owner from any liabilities or obligations accrued, payable, or performable prior to such sale, conveyance, or other disposition.

8.3 Estoppel Certificates. Any Owner shall, whenever requested by another Owner or its Mortgagee, execute a statement certifying to its knowledge that no Default exists under this REA or specifying each Default of which such Owner may have knowledge.

8.4 Mortgages. This REA and its covenants, conditions, restrictions, easements, liens, charges, and equitable servitude shall be superior to any Mortgage or other lien or encumbrance. Any notice of Default or potential Default given by an Owner shall also be given to any Mortgagee who has previously identified its name and address to the Owners and requested that such notices be furnished. Mortgagees shall have the right (but not the obligation) to correct any circumstance constituting a Default or potential Default, and if permitted by applicable Laws, may do so prior to obtaining possession of the Tract encumbered by the affected Mortgage. Except as provided in the preceding sentences of this Section, no Mortgagee shall have any approval or other rights under this REA prior to taking possession of, or foreclosing on, a Tract. No Mortgagee shall have any responsibility or liability for payment of any expenses accruing under Section 3.8, above, with respect

to a particular Tract except for expenses which accrue after such Mortgagee shall have taken possession of or foreclosed upon the Tract. Expenses accruing under Section 3.8, above, with respect to the Tract or the Owner of such Tract, prior to taking of possession or foreclosure by the Mortgagee, shall not be or become the liability of such Mortgagee.

## ARTICLE IX DEFAULT AND REMEDIES

9.1 **Default.** An Owner shall be in "Default" if:

(a) An Owner fails or refuses to pay any insurance premium required to be paid by such Owner hereunder, or any other sum of money otherwise due and payable pursuant to the provisions of this REA and the failure or refusal continues for more than ten (10) days after notice from any other Owner.

(b) An Owner fails or refuses to comply with any other provision of this REA not requiring the payment of money and the failure or refusal continues for more than thirty (30) days (or for such longer time as may be necessary if the failure cannot reasonably be corrected within thirty (30) days) after notice from another Owner.

9.2 **Remedies.** An Owner who is not in Default may exercise any one or more of the following remedies with respect to an Owner who is in Default:

(a) Pay any sum that the Owner in Default failed or refused to pay.

(b) Without resort to judicial process, peaceably enter the Tract of the Owner in Default and do whatever is reasonably necessary to remedy any noncompliance with the provisions of this REA.

(c) Without resort to judicial process, peaceably deny the Owner in Default and/or its Occupants access to and use of any Common Facilities located outside the boundaries of the Tract of the Owner in Default.

(d) By appropriate legal proceedings, enjoin the noncompliance with the provisions of this REA by the Owner in Default.

(e) By appropriate legal proceedings, recover from the Owner in Default all damages and other costs or expenses incurred pursuant hereto.

(f) Exercise such other rights and remedies as may legally be available.

9.3 **Attorneys' Fees.** Any Owner shall be entitled to recover reasonable attorneys' fees and expenses incurred in exercising and enforcing its remedies under this REA from any Owner who is in Default.

9.4 **Interest.** All sums owing and unpaid under this REA shall bear interest from the date due until paid at the rate equal to the lesser of the maximum lawful rate or six percent (6%) per annum above the prime-lending rate then announced by Bank of America or its successors.

9.5 **Waiver.** The failure of any Owner to insist upon strict performance or to exercise any remedy for a Default shall not be construed as a waiver. The waiver of any Default does not prevent any subsequent similar act from being a Default. No waiver of a Default or of any provision of this REA shall be effective unless expressed in writing signed by all Owners; and no such waiver shall affect any condition other than the one specified in the waiver, and then only for the time and in the manner stated.

## ARTICLE X MISCELLANEOUS

10.1 **Amendment; Term.** This REA may be amended only by a written instrument executed and approved by all Owners (in accordance with Section 10.14) and recorded in the Real Property Records of Dallas County, Texas. Any other form of attempted amendment shall be void. Except as provided in Article V hereof, this REA shall continue in full force and effect unless and until a written agreement of termination executed by all Owners (in accordance with Section 10.14) and all Mortgagees is recorded in the Real Property Records of Dallas County, Texas. Any other form of attempted termination shall be void.

10.2 **Approval.** Whenever the consent or approval of any Owner is required pursuant to this REA, such consent or approval shall be:

(a) Withheld only for good and reasonable cause unless this REA specifies that the approval or consent may be given or withheld at the discretion of an Owner.

(b) Given or withheld free of any condition that the requesting Owner pay any fees or charge other than as reimbursement for direct, out-of-pocket expenses.

(c) Given in writing before the action is taken (or before the effectiveness of any item) for which the consent or approval is required.

(d) Deemed given if requested in writing and not withheld by written notice delivered to the requesting Owner on or before the twentieth (20th) day after receipt of such request (unless this REA specifies a different response time, in which case the different specified response time shall apply).

10.3 **Notice.** Any notice contemplated by this REA shall be in writing, and may be given by depositing the notice in the United States mail, postage paid and certified and addressed to the Owner to be notified with return receipt requested, or by delivering the same in person to the Owner. Unless actually received earlier, notice deposited in the mail in the manner described above shall be effective on the second day after it is so deposited, even if not received. Notice given in any other

manner shall be effective only if and when received. The notification addresses of the Owners are specified on the signature page of this REA. Each Owner may change its address on at least ten (10) days' notice to the other Owners.

10.4 **Captions.** The captions appearing in this REA are included solely for convenience and shall never be given any effect in construing this REA. References to Sections, Articles and Exhibits are references to the sections, articles and exhibits in or attached to this REA.

10.5 **Use of Terms.** All pronouns include the other genders, however used, and the singular includes the plural whenever it is appropriate. The word "include" and other forms of that word do not denote an exhaustive or complete list or enumeration. The word "shall" is mandatory, and the word "may" is permissive.

10.6 **Entirety.** This REA embodies the entire contract between the Owners, and supersedes all prior agreements of an inducement nature, if any, are merged with, and stated in, this REA.

10.7 **Counterparts.** This REA may be executed in multiple counterparts, each of which shall be considered an original for all purposes.

10.8 **Severability.** If any provision of this REA is invalid or unenforceable, the remainder of this REA shall not be affected. Each separate provision of this REA shall be valid and enforceable to the fullest extent permitted by Law.

10.9 **Governing Law.** This REA is governed by the Laws of the State of Texas.

10.10 **No Dedication Implied.** No gift or dedication to the public is intended by (and none may be inferred from) any circumstance in or relating to this REA.

10.11 **No Partnership Implied.** No partnership or joint venture is intended by (and none may be inferred from) any circumstance in or relating to this REA.

10.12 **Contract with Affiliates.** Nothing in this REA precludes an Owner from entering into contracts with its Affiliates or engaging in any other business, even if such business is in competition with the business of other Owners.

10.13 **Force Majeure.** No Owner shall be liable for any delay or other inability to perform attributable solely to Force Majeure.

10.14 **Benefit of REA.** The easements and other provisions of this REA are solely for the benefit of the Owners. The 501 Elm/Record Owner and the 509 Elm Commercial Owner may allow Occupants of their respective Tracts to use and enjoy the Common Facilities (subject to applicable provisions of this REA) under separate agreements or understandings with such applicable Owner. It is acknowledged and agreed that owners of Condominium Units have the right to use the Common Facilities pursuant to the terms of the REA and the Condominium Declaration but nothing in such



Condominium Declaration shall be deemed to grant any greater rights to such facilities than are granted in this REA, it being agreed that in the event of inconsistency or conflict the terms of this REA shall control. Pursuant to the terms of this Condominium Declaration, the rights and benefits with respect to the Common Facilities created pursuant to this REA are General Common Elements (as such term is defined in the Condominium Declaration) appurtenant to each Condominium Unit. Pursuant to the Condominium Declaration, each owner of a Condominium Unit has automatically and irrevocably delegated and granted to the Association the exclusive right (i) to act as the Residence Owner under this REA, (ii) to receive any notices to be received by the Residence Owner under this REA, (iii) to deliver any notices to be delivered by the Residence Owner under this REA, (iv) to make any decisions which are within the discretion of the Residence Owner under this REA, and (v) to take any and all other actions required of or permitted by the Residence Owner under this REA. Any action taken or not taken by the Association hereunder shall be deemed to be binding on all owners of Condominium Units. The Association hereby executes this REA to evidence such agreement. Each owner of a Condominium Unit is bound by the action or non-action of the Association acting pursuant to the terms of this REA.

**[SIGNATURE PAGES FOLLOW ON NEXT PAGE]**


IN WITNESS WHEREOF, this REA is executed as of the date first above written.

**DECLARANT:**

Address:  
501 Elm Street, Suite 375  
Dallas, Texas 75202

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

By: Collinternational I, Inc., a Texas  
corporation, general partner

By:   
Gary A. Briel, Vice President

**ASSOCIATION:**

Address:  
501 Elm Street, Suite 375  
Dallas, Texas 75202

501 ELM PLACE RESIDENCES  
ASSOCIATION, INC.

By:   
Gary A. Briel, Vice President

THE STATE OF TEXAS

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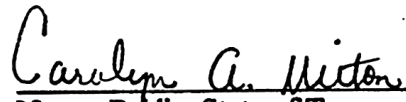
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared GARY A. BRIEL, Vice President of COLLINTERNATIONAL I, INC., a Texas corporation, sole general partner of 501 Elm Place Partners, Ltd., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as a duly authorized officer of such corporation, and as the act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

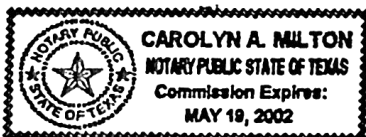
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 24<sup>th</sup> day of June, 1999.

My Commission Expires:

5/19/02

  
Notary Public, State of Texas

Carolyn A Milton  
(Typed/Printed Name of Notary)



THE STATE OF TEXAS

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COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared GARY A. BRIEL, Vice President of 509 ELM RESIDENCES ASSOCIATION, INC., a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as a duly authorized officer of such corporation, and as the act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14<sup>th</sup> day of June, 1999.

Carolyn A. Milton  
Notary Public, State of Texas

My Commission Expires:

5/19/02

CAROLYN A. MILTON  
(Typed/Printed Name of Notary)

