776762

CONDOMINIUM DECLARATION FOR MEMORIAL GROVE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY, OF HARRIS §

THAT, WHEREAS MEMORIAL GROVE, LTD., A Texas Limited Partnership, hereinafter called "Declarant", is the owner of real property situated in the County of Harris, State of Texas, being described as follows:

TRACT I

A 3.4300 acre tract of land located in the A. H. Osbourne Survey, Abstract No. 610, Harris County, Texas, said tract also being a part of Tract "C" of that certain Baird Subdivision plat filed for record in Volume 83, Page 43, Harris County Map Records, and being further described by metes and bounds as follows:

COMMENCING for reference at a 5/8 inch iron rod marking the intersection of the southerly line of Gaylord Drive (60.00 feet wide) and the east line of Corbindale Road (60.00 feet wide);

THENCE with the southerly line of Gaylord Drive North 89°54'35" East, a distance of 235.26 feet to a one inch iron pipe , marking the northwest corner of said Tract "C";

THENCE continuing with said southerly line of Gaylord Drive North 89°54'35" East, a distance of 58.96 feet to a cut "X" in a concrete

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TRACT I

A 3.4300 acre tract of land located in the A. H. Osbourne Survey, Abstract No. 610, Harris County, Texas, said tract also being a part of Tract "C" of that certain Baird Subdivision plat filed for record in Volume 83, Page 43, Harris County Map Records, and being further described by metes and bounds as follows:

COMMENCING for reference at a 5/8 inch iron rod marking the intersection of the southerly line of Gaylord Drive (60.00 feet wide) and the east line of Corbindale Road (60.00 feet wide);

THENCE with the southerly line of Gaylord Drive North 89°54'35" East, a distance of 235.28 feet to a one inch iron pipe , marking the northwest corner of said Tract "C";

THENCE continuing with said southerly line of Gaylord Drive North 89°54'35" East, a distance of 58.96 feet to a cut "X" in a concrete sidewalk marking the point of curvature;

THENCE along the arc of a non-tangent curve to the left, through a central angle of 22°12'33", having a radius of 630.00 feet, and a distance of 222.21 feet to a 5/8 inch rod marking the POINT OF BEGINNING;

THENCE continuing along the arc of said non-tangent curve to the left, through a central angle of 14°47'01", having a radius of 630.00 feet, and a distance of 162.56 feet to a 5/8 inch iron rod marking the point of tangency;

THENCE North 54°48'23" East, a distance of 166.75 feet to a 5/8 inch iron rod, marking the northeast corner of said Tract "C";

THENCE leaving said southerly line of Gaylord Drive, along the east line of said Tract "C", South 00°18'31" West, a distance of 629.23 feet to a 1/2 inch iron rod, marking the southeast corner of said Tract "C";

THENCE, along the south line of said Tract "C", North 89°57'49" West, a distance of 279.19 feet to a 5/8 inch iron rod;

THENCE North 00°18'31" East, a distance of 458.20 feet to the POINT OF BEGINNING, and containing 149.413 square feet or 3.4300 acres of land.

TRACT II

A 2.7204 acre tract of land located in the A. H. Osbourne Survey, Abstract No. 610, Harris County, Texas, said tract also being a part of Tract "C" of that certain Baird Subdivision plat filed for record in Volume 83, Page 42, Harris County Map Records, and being further described by metes and bounds as follows:

COMMENCING for reference at a 5/8 inch iron rod marking the intersection of the southerly line of Gaylord Drive (60.00 feet wide) and the east line of Corbindale Road (60.00 feet wide);

THENCE with the southerly line of Gaylord Drive North 89°54'35" East, a distance of 235.38 feet to a one inch iron pipe, marking the POINT OF BEGINNING:

THENCE continuing with said southerly line of Gaylord Drive North 89°54'35" East, a distance of 58.96 feet to a cut "X" in a concrete sidewalk marking the point of curvature;

THENCE along the arc of a non-tangent curve to the left, through a central angel of 20°12'33", having a radius of 630.00 feet, and a distance of 222.21 feet to a 5/8 inch iron rod;

THENCE leaving said southerly line of Gaylord Drive, South 00°18'31" West, a distance of 458.20 feet to a 5/8 inch iron rod in the south line of said Tract "C";

THENCE, along the south line of said Tract "C", North 89°57'49" West, a distance of 275.06 feet to a 5/8 inch rod marking the southwest corner of said Tract "C";

THENCE, along the west line of said Tract "C", north 00°06'54" East, a distance of 419.68 feet to the POINT OF BEGINNING, and containing 118,500 square feet or 2.7204 acres of land.

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

WHEREAS, Declarant, as a real estate developer, desires to establish a condominium regime under the Condominium Act of the State of Texas, (Acts 1963, 58th Leg., P. 507, Ch. 191) herein called the "Act"; and

WHEREAS, Declarant has executed plans for the refurbishment of sixteen (16) buildings and other improvements appurtenant thereto on the property described in said Exhibit "A", which, when completed, shall consist of one hundred thirty-eight (138) separately designated condominium units; and

WHEREAS, Declarant does hereby establish a plan for individual ownership in fee simple of estates consisting of the area or space contained within each of the apartment units as hereinafter defined, in the sixteen (16) buildings and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property, which includes both Limited Common Elements and General Common Elements, as hereinafter defined in

Paragraph 1.2 hereof, which are hereinafter collectively referred to as the "Common Elements" or "Common Areas".

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, and assigns.

ARTICLE I

GENERAL TERMS

1.1 TERMS DEFINED ABOVE. As used in this agreement, the term "Declarant", "Act" and "Common Elements" or "Common Areas" shall have the meanings respectively indicated in the opening paragraphs hereof.

1.2 CERTAIN DEFINITIONS. As used in this agreement, the following terms shall have the following meanings unless the context shall expressly provide otherwise:

(a) "Declaration" shall mean this Condominium Declaration instrument as the same may be amended pursuant to the Article hereof entitled "Amendment".

(b) "Apartment" or "Apartment Unit" shall mean the elements of a "Condominium Unit" as hereinafter defined, which are not owned in common with the "Owners" (as hereinafter defined) of other condominiums in the project as shown on the maps, which are exhibits attached hereto and each "Apartment Unit" shall include the apartment space assigned to each such Apartment Unit. The boundaries of each Apartment Unit space shall be and are the interior surfaces of the perimeter walls, windows, and window frames, door and door frames, and trims, and the space includes both the portions of the building so described and

the air space so encompassed, excepting the Common Elements. The individual ownership of each apartment space herein defined shall further include the interior construction, partitions, appliances, fixtures and improvements which are intended to exclusively serve such apartment space, such as interior room walls, floor covering or finish, closets, cabinets, shelving, individual bathroom and kitchen fixtures, plumbing and appliances, individual lighting and electrical fixtures, air cooling systems (excluding the central boiler system, if any), and other separate items or chattels belonging exclusively to such apartment unit which may be removed, replaced, disposed of or otherwise treated without affecting any other apartment space or the ownership, use or enjoyment thereof. None of the land in this project on which any Apartment Unit space or porch or patio space is located shall be separately owned, as all land within this project shall constitute part of the "General Common Elements" of the property as hereinafter defined, and shall be owned in common by the Owners of the Apartment Units in this condominium project.

(c) "Condominium Unit" shall mean an individual Apartment unit together with the interest in the said "General Common Elements" and "Limited Common Elements" appurtenant to such Apartment Unit.

(d) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more Condominium Units.

(e) "General Common Elements or Areas" means and includes

(1) The land on which the buildings are located;

(2) The foundations, columns, girders, beams, supports, main walls, bearing walls, roofs, stairways, entrances and exits or communication ways;

(3) The yards and gardens, if any, general parking areas, if any, (which are not being included in the said "Limited Common Elements"), fences, walks, service easements, storage spaces, if any, (which are not being included in the said Limited Common Elements), and driveways;

(4) The installations consisting of the equipment and materials making up central services such as power, light, gas and the like;

(5) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(f) "Limited Common Elements" means and includes those Common Elements or Common Areas which are reserved for the exclusive use of an Owner or Owners of one or more Condominium Unit(s) as designated, which include assigned covered parking areas, and adjacent storage area, if any, patios and certain designated balcony areas indicated on the maps, as appurtenant Limited Common Elements to a specific Apartment Unit and/or several Apartment Units, all as so indicated.

(g) "Premises", "Project" or "Property" means and includes the land, the buildings, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

(h) "Common Expenses" means and includes:

(1) All sums assessed against the Owners by the Managing Agent or Board of Managers of the

"Association" as hereinafter defined, pursuant to Paragraph 5.1 hereof and other provisions hereof.

(2) Expenses of administration and management, maintenance, repair and replacement of the Common Elements;

(3) Expenses agreed upon as common expenses by the Owners; and

(4) Expenses declared common expenses by provisions of this Declaration and by the By-Laws of the said "Association".

(i) "Condominium Owners Association" or "Association" means a Texas nonprofit corporation, the By-Laws of which shall govern the administration of this condominium property, through the therein referenced Board of Managers or Managing Agent, the membership of which shall be composed of all of the Owners of the Condominium Units according to such By-Laws.

(j) "Map", "Survey Map", "Maps", or "Plans", mean or include the engineering survey of the land locating thereon, all of the improvements, the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of, or all of, the improvements, same being herewith filed, consisting of ten (10) sheets labeled Exhibit "A-Sheet 1" through "A-Sheet 10" inclusive, and incorporated herein.

(k) "Construction Period" means that period of time during which Declarant is developing the premises and selling the Condominium Units, which time period shall extend from the date hereof until such time as the Declarant conveys ninety percent

(90%) of the Condominium Units, or twenty-four (24) months from the date on which the Declarant makes the first transfer of a Condominium Unit to an Owner other than Declarant, whichever occurs first.

ARTICLE II

CONDOMINIUM UNIT DESIGNATIONS AND DESCRIPTIONS

2.1 RECORDATION OF MAPS. The Survey Map shall be filed for record simultaneously with the recording of this Declaration as a part hereof, and prior to the first conveyance of any Condominium Unit. Such Map consists of and sets forth (1) the legal description of the surface of the land; (2) the linear measurements and location, with reference to the exterior boundaries of the land, of the buildings and all other improvements constructed, or to be constructed, on said land by Declarant; (3) floor plans and elevation plans of the buildings built, or to be built, thereon showing the location, the building designation, the Apartment Unit designation and the linear dimensions of each Apartment Unit; and (4) the elevations of the interior surfaces of the floors and ceilings as established from a datum plane.

2.2 DESIGNATION OF APARTMENT UNITS. The Property is hereby divided into separately designated Condominium Units consisting of:

(a) One hundred thirty-eight (138) separately designated Apartment Units, each Apartment identified by number and by building symbol or designation on the plans, the Apartments in each building being described as follows:

BUILDING A - Containing eight (8) Apartments, numbered A-1 through A-8, inclusive, the size,

dimensions, location and boundaries of each being detailed on the Survey Plat of Building "A" hereto attached, marked Exhibit "A", Sheets No. 5 and 6;

BUILDING B - Containing six (6) Apartments, numbered B-1, B-2, B-3, B-4, B-6, B-8, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "B" hereto attached marked Exhibit "A", Sheets No. 5 and 6;

BUILDING C - Containing six (6) Apartments, numbered C-1, C-2, C-3, C-4, C-6, C-8, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "C" hereto attached marked Exhibit "A", Sheets No. 9 and 10;

BUILDING D - Containing eight (8) Apartments, numbered D-1 through D-8, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "D" hereto attached marked Exhibit "A", Sheets No. 9 and 10;

BUILDING E - Containing eight (8) Apartments, numbered E-1 through E-8, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "E" hereto attached marked Exhibit "A", Sheets No. 5 and 6;

BUILDING F - Containing twelve (12) Apartments, numbered F-1 through F-12, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "F" hereto attached marked Exhibit "A", Sheets No. 5 and 6;

BUILDING G - Containing eight (8) Apartments, numbered G-1 through G-8, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "G" hereto attached marked Exhibit "A", Sheets No. 5 and 6;

BUILDING H - Containing six (6) Apartments, numbered H-1 through H-6, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "H" hereto attached marked Exhibit "A", Sheets No. 7 and 8;

BUILDING I - Containing six (6) Apartments, numbered I-1 through I-6, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "I" hereto attached marked Exhibit "A", Sheets No. 7 and 8;

BUILDING J - Containing eight (8) Apartments, numbered J-1 through J-8, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "J" hereto attached marked Exhibit "A", Sheets No. 7 and 8;

BUILDING K - Containing eight (8) Apartments, numbered K-1 through K-8, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "K" hereto attached marked Exhibit "A", Sheets 7 and 8;

BUILDING L - Containing sixteen (16) Apartments, numbered L-1 through L-16, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "L" hereto attached marked Exhibit "A", Sheets 9 and 10;

BUILDING M - Containing sixteen (16) Apartments, numbered M-1 through M-16, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "M" hereto attached marked Exhibit "A", Sheets No. 9 and 10;

BUILDING N - Containing six (6) Apartments, numbered N-1 through N-6, inclusive, the size,

dimensions, location, and boundaries of each being detailed on the Survey Plat of Building "N" hereto attached marked Exhibit "A", Sheets No. 11 and 12;

BUILDING O - Containing four (4) Apartments, numbered O-1 through O-4, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "O" hereto attached marked Exhibit "A", Sheets No. 9 and 10;

BUILDING P - Containing twelve (12) Apartments, numbered P-1 through P-12, inclusive, the size, dimensions, location and boundaries of each being detailed on the Survey Plat of Building "P" hereto attached marked Exhibit "A", Sheets No. 9 and 10;

(b) The remaining portion of the Premises, referred to as the Common Elements, shall be owned in common by the Owners. The Owner of each Apartment Unit shall own a percentage of undivided interest in the Common Elements to the extent set opposite the Apartment Unit designation in Exhibit "B", attached hereto and made a part hereof for all purposes.

2.3 LIMITED COMMON ELEMENTS. A portion of the Common Elements are set aside and reserved for the exclusive use of the individual Owners, such areas being Limited Common Elements. The Limited Common Elements reserved for the exclusive use of the Owners or groups of Owners as indicated, are certain covered and uncovered automobile parking spaces, certain patio and/or balcony areas, all of which are shown on the Map. Such spaces are allocated and assigned by the Declarant to the respective Condominium Units as indicated on Exhibit "A", the patio assigned to each Apartment Unit being designated by the Apartment Unit number preceded by the prefix "P", the balcony assigned to each Apartment Unit or groups of Apartment Units being

designated by the Apartment Unit number or numbers preceded by the prefix "BK", and the certain covered parking spaces which are assigned to an Apartment Unit being designated by the Apartment Unit number preceded by the prefix "CP" and certain uncovered parking spaces which are assigned to an Apartment Unit being designated by the Apartment Unit number preceded by the prefix "UP". Such Limited Common Elements shall be used in connection with the particular Apartment Unit or Units to the exclusion of the use thereof by the other Owners except by invitation.

2.4 REGULATION OF COMMON ELEMENTS. Portions of the Common Elements are intended as leisure areas, and are improved with swimming pools, office and other facilities. Reasonable regulations governing the use of such facilities by Owners and by their guests and invitees shall be promulgated by the Declarant, or by the Board of Managers of the Association after the same has been elected, or the Managing Agent of the Association. Such 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 Board of Managers for the compliance therewith by the members of their respective families, relatives, guests or invitees, both minor and adult.

2.5 INSEPARABLE UNITS. Each Apartment Unit and its prorata interest in and to the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit.

2.6 DESCRIPTIONS. Every deed, lease, mortgage, deed of trust or other instrument may legally describe a Condominium Unit by its identifying Apartment Unit Number or designation as shown on the map, followed by the words "MEMORIAL GROVE" and by a reference to this recorded Declaration and Map.

Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise effect the Common Elements.

2.7 ENCROACHMENTS. If any portion of the Common Elements encroaches upon an Apartment Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion or portions of an Apartment Unit or Units encroaches upon the Common Elements, or another Apartment Unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. For the purposes hereof, the term "encroachment" includes any and all encroachments, including specifically and without limitation, any encroachments which may exist at this time or which may result from any shifting of the property, authorized reconstruction or alterations. 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 Apartment Units.

2.8 GOVERNMENTAL ASSESSMENT. Declarant shall give written notice to the Assessor's Office of the creation of condominium ownership of this property, as is provided by law, so that each Apartment Unit and its percentage of undivided interest in the Common Elements shall be deemed a separate parcel and subject to separate assessment and taxation. Rendering the Property to the respective taxing authorities shall be performed in such a manner, Condominium Unit by Condominium Unit, and not as a whole.

2.9 USE RESTRICTIONS. The ownership interest of each Owner in his respective Condominium Unit and the estate therein, shall be subject to the terms, conditions and provisions hereof.

(a) The Condominium Units shall be used only for single family residential purposes, as private residence, and no professional, business or commercial use shall be made of the same, or any

portion thereof; provided, however, that Declarant may use any of the Property as sales offices and/or furnished models and for displaying advertising signs and construction purposes at the premises during the said Construction Period. No Owner or resident shall use a Condominium Unit in such a manner so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

(b) The parking spaces assigned to each Apartment Unit shall be used for the parking of operative vehicles only. Such parking area shall not be used for a storage area for parts, machinery, inoperative cars, or anything judged to be a nuisance by the Association. No drilling, digging, quarrying, or mining operation of any sort shall be permitted on the Premises. No structure of a temporary character, trailer, basement, tent, shack, garden, barn, or other out buildings shall be used on the Premises at any time except as set forth in (d) below;

(c) No advertising signs (except "For Sale" of not more than five square feet per unit), billboards, unsightly objects, or nuisances shall be erected, displaced, or permitted to remain on the Premises.

(d) The foregoing covenants of subsection (b) and (c) of this paragraph 2.9, shall not apply to the activities of the Association or its appointed representatives. Declarant may maintain, during the Construction Period in or upon such portions of the Apartment Units or the Common Elements, as Declarant determines, such facilities as, in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any apartment unit, except dogs, cats or other common household pets (not to exceed a total of one (1) pet per apartment unit) may be kept provided that it is not kept, bred, or maintained for any commercial purposes. All permitted household pets shall be kept inside the Apartment Unit at all times, except that pets may be taken to areas designated by the Association (or Declarant during the Construction Period) if such pets are and remain leashed at all times when outside the Apartment Unit.

(f) All rubbish, trash, or garbage from a Condominium Unit shall be kept in the areas designated for such purposes by the Association, and shall be regularly removed from the Premises and shall not be allowed to accumulate thereon.

(g) Outdoor drying of clothes shall not be permitted.

(h) Without prior written authorization of the Association, no television or radio antennas of any sort

shall be placed, allowed, or maintained on any portion of the exterior of the improvements located on the property, or any structure situated upon the property.

(i) No vehicle shall be parked in driveways. For a period not to exceed forty-eight (48) hours, guests and invitees of Owners may park their vehicles in the surface parking areas within the Common Areas provided for such purpose. Such surface parking areas are not intended for use for parking or storing boats, trailers, camping units, parts, machinery, inoperative or unlicensed cars, or anything judged to be a nuisance by the Association and the Association may insure the proper use of said areas in such legal manner as deems necessary.

(j) Except in the individual patio and/or balcony areas appurtenant to an Apartment Unit, as designated as such a Limited Common Area on the Map, no planting, transplanting or gardening shall be done, and no fences, hedges or walks shall be erected or maintained upon the Premises, except as installed in accordance with the initial renovation of the building or as approved by Declarant during the Construction Period or the Association after said construction period.

(k) All floors and floor coverings installed in the secondstory Apartment Units shall be approved by the Association for adequate sound control, prior to installation.

(l) No Owner may lease less than the entire Unit. Any Lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Unit Owner to lease his Unit.

2.10 CHANGE OF COMMON ELEMENTS. During the Construction Period, Declarant shall retain and have the power to unilaterally amend the physical lay-out or makeup of any and all unsold buildings, Condominium Units, the Common Elements (both General and Limited); however, in connection therewith, there shall be no change of pro rata interest or obligations of any or all Units for purposes of determining ownership in the Common Elements and for purposes of levying or determining assessment and charges and proceeds of the project; however, the power hereby retained by Declarant shall be subject to Declarant

first obtaining the prior written approval of all of the holders of first mortgage liens on the individual Condominium Units.

ARTICLE III

RIGHTS AND OBLIGATIONS OF OWNERSHIP

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

3.2 PARTITION. The Common Elements (both General and Limited) shall be owned in common by all of the Owners of the Condominium Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements other than that as specifically provided for hereinafter at Paragraph 6.2, "Judicial Partition". Nothing contained herein shall be construed as a limitation of the right of partition of a Condominium Unit between the Owners thereof, but such partition shall not effect any other Condominium Unit.

3.3 EXCLUSIVENESS OF OWNERSHIP. Each owner shall be entitled to exclusive ownership and possession of his Apartment Unit. Each Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

3.4 SINGLE FAMILY RESIDENTIAL DWELLING. Each Condominium Unit shall be occupied and used by the owner only as and for a single family residential dwelling for the Owner, his family, his social guests, or his tenants.

3.5 MECHANIC'S AND MATERIALMAN'S LIENS. No labor performed or materials furnished and incorporated in an Apartment Unit, notwithstanding the consent or at the request of the Owner thereof, or his agent or his contractor or subcontractor, shall be the basis for filing of a lien against the Common Elements owned by such other Owners.

Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Apartment Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Apartment Unit at such Owner's request.

3.6 RIGHT OF ENTRY. The Owners shall have the irrevocable right, to be exercised by the Managing Agent or Board of Managers of the Association, to have access to each Apartment Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Apartment Unit or Units.

3.7 OWNER MAINTENANCE. An Owner shall maintain and keep in repair the interior of his own Apartment Unit, including the fixtures thereof. All fixtures and equipment installed within the Apartment Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Apartment Unit, and the air cooling and blowing unit connected therewith, and located on the exterior of the Apartment Unit, shall be maintained and kept in repair by the Owner thereof; and an Owner shall be obliged to promptly repair and replace any broken or cracked glass in windows and doors.

3.8 ALTERATION. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. For

the purposes hereof, the placing of a waterbed anywhere on the Premises shall be deemed to be such an act as would impair the structural soundness and integrity of the building. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatever upon any of the Common Elements, (Limited or General), save with the written consent or approval in writing by the Board of Managers or its designated agent, which approval shall not be considered until submission to the Board of Managers or its registered Agent of complete plans and specifications showing the nature, kind, shape, size, materials, color and location of the same for all proposed work. During the Construction Period, Declarant shall be the designated agent of the Board of Managers, and Declarant shall have the sole right to approve or reject any plans and specifications submitted for consideration by an owner.

3.9 RESTRICTION OF OWNERSHIP. As a restriction of the ownership provisions set forth at 1.2(b), "Apartment Unit", hereinbefore, an Owner shall not be deemed to own the unfinished surfaces of the perimeter walls, floors, ceilings and roofs surrounding his Apartment Unit, nor shall such Owner be deemed to own the utilities running through his Apartment Unit which are utilized for, or serve more than, one Apartment Unit, except as a tenant-in-common with the Owners. An 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, and other such finishing material.

3.10 LIABILITY FOR NEGLIGENT ACTS. In the event that the need for maintenance or repair is caused through the

willful or negligent act of an Owner, his family, or guests, or invitees, and is not covered or paid for by insurance on such Apartment Unit, or the Common Elements, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Apartment Unit is subject, pursuant to Article IV hereof.

3.11 SUBJECT TO DECLARATION AND BY-LAWS. Each Owner shall comply strictly with the provisions of this Declaration, the By-Laws of MEMORIAL GROVE OWNERS' ASSOCIATION, as hereinafter described in section 4.1 hereof, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief, or both, maintainable by the Managing Agent or Board of Managers on behalf of the Owners or, in proper case, by an aggrieved Owner.

The Association shall give the holders of first lien mortgages prompt notice of any default in the owner's obligations hereunder not cured within (30) days of default.

ARTICLE IV

MANAGEMENT AND ADMINISTRATION

4.1 The administration of this condominium property shall be governed by the By-Laws of MEMORIAL GROVE OWNERS' ASSOCIATION, a non-profit association, hereinafter referred to as the "Association". A copy of the By-Laws is hereto attached, marked Exhibit "C", and incorporated herein, and shall be deemed adopted by Declarant as sole owner of the property, and all owners shall be bound thereby. An Owner of a Condominium Unit, upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of his ownership. Declarant shall, during the Construction Period, cause to be formed a Texas non-profit corporation bearing the same name, in which event such non-

profit corporation shall adopt the By-Laws of the Association and shall thereafter act and do all things to be done by "Association", according to the By-Laws of the Association. Association shall be managed by a Board of Managers, duly appointed or elected, pursuant to the terms and conditions of the By-Laws, and by the Managing Agent of the Association as chosen by the Board of Managers, pursuant to the By-Laws. Said Board of Managers shall, as duly appointed or elected at the time of the organizational meeting of the Association, remain the same during the "Construction Period" as herein defined unless reappointed or elected by Declarant during such Period. Vacancies occurring on such Board of Managers during such Period by death or resignation shall be replaced through appointment or election by Declarant.

4.2 SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT.

Every 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 Areas and the improvements and facilities located thereon, and to establish and enforce penalties for infractions thereof;

(b) The right of the Association to charge reasonable admission, rental and other fees to Owners or guests, for the use of any facilities situated upon the Common Area; without limiting the generality of the foregoing;

(c) The right of the Association to charge reasonable fees for the use of facilities within the Common Area if such facilities are not used by all members equally;

(d) The right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in such properties shall be subordinate to the rights of the Owners hereunder and in no event shall any such Mortgagee have the right to terminate the Condominium Regime established by this Declaration; and provided such loan or mortgage has been approved by three-fourths (3/4) vote of the quorum of owners, present at a meeting of the Association, specifically called for the purpose of approving any such loan or mortgage;

(e) The right and duty of the Association to suspend the voting rights and the right to the use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Condominium Unit remains unpaid; and for a period not to exceed thirty (30) days from any infraction of its published Rules and Regulations;

(f) The right of Declarant during the Construction Period, or the Association after the Construction Period, to dedicate or transfer all or any part of the Common Area 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 after the Construction Period shall be effective unless approved by three-fourths (3/4) vote of the quorum of Owners, present at a meeting of the Association, specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Managers, reflecting such vote of the Owners, agreeing to such dedication, or transfer, has been duly recorded in the Condominium Records of Harris County, Texas;

(g) The right of the Association to adopt, implement and maintain a private security system for the premises consistent with applicable laws;

(h) The right of the Association to establish rules and regulations governing traffic within the Common Area, and to establish sanctions for any violation or violations of such rules and regulations;

(i) The right of the Association to regulate noise within the Premises, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise;

(j) The right of the Association to control the visual attractiveness of the properties, including, without limitation, the right to require Owners to eliminate objects which are visible from the common area which detract from the visual attractiveness of the Property.

4.3 INSURANCE. The Managing Agent or Board of Managers shall keep the premises insured for fire, extended coverage, malicious mischief and vandalism, in an amount equal to the replacement value of such common elements, and shall obtain and maintain, at all times, insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other apartment or condominium buildings, fixtures, equipment and personal property, similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Texas. The Replacement Value, for the purposes hereof, shall be determined annually, by appraisals, as may be deemed prudent or necessary by the Board, one or more mortgagees, or the insurance underwriter. Further, the Managing Agent or Board of Managers shall obtain and maintain comprehensive liability insurance covering the entire premises, in amounts of not less than $100,000.00 per person and $300,000.00 per accident and $1,000,000.00 property damages. The insurance shall be carried in blanket policy forms naming the Managing Agent or Board of Managers of the Association and all mortgagees as the insureds, which policy or policies shall identify the interest of each Condominium Unit Owner and which shall provide for a standard, noncontributory mortgage clause in favor of each first mortgagee. The proceeds of all insurance policies owned by the Association shall be received by the Association, held in a separate account, and distributed to the Owners, their mortgagees, and the Association (subject to the provisions of the Declaration, the Act, and the By-Laws) as their interests may appear. Each Owner irrevocably designates the Managing Agent and the Board of Managers as Attorney-in-fact for

handling of the proceeds of such insurance, with such Attorney-in-fact administering and distributing such proceeds as is elsewhere provided in this Declaration. Such insurance policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after sixty (60) days prior written notice to each first mortgagee. Said Managing Agent or Board of Managers shall, upon request of any first mortgagee, furnish a certified copy of each blanket policy and the separate certificate identifying the interest of the mortgagor and mortgagee.

Exclusive authority to adjust losses under policies hereafter in force in the project shall be invested in the Board of Managers or its authorized representative. In no event shall the insurance coverage obtained and maintained by the Board of Managers hereunder be brought into contribution with insurance purchased by the individual Owners or their mortgagees.

It shall be the individual responsibility of each Owner, at his own expense, to provide, as he sees fit, liability insurance, theft insurance, insurance on any interior fixtures, additions or betterments made by such Owner to his Apartment Unit, and other insurance covering personal property damage and loss, provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Managers, on behalf of all of the Owners, may realize under any insurance policy which the Board of Managers may have in force on the project at any particular time.

4.4 ACCOUNTING AND AUDIT PROCEDURES. The Board of Managers, or the Managing Agent, shall keep, or cause to be kept, a book with a detailed account of the receipts and

expenditures affecting the common elements and their administration, and specifying the maintenance and repair expenses of the Common Elements and any other expenses incurred by or in behalf of the Association. Both the book and vouchers accrediting the entries made thereon shall be available for examination by the Owners and this respective mortgagees at reasonable hours on business days. All books and records shall be kept in accordance with standard accounting procedures consistently applied, and shall be audited at least once a year by an auditor outside of the organization.

ARTICLE V

MAINTENANCE ASSESSMENT

5.1 ASSESSMENTS. All Owners shall be obligated to pay the estimated assessments imposed by the Board of Managers or Managing Agent of the Association to meet the Common Expenses. The assessments shall be made pro rata according to each Owner's percentage interest in and to the Common Elements. Assessments for the estimated "Common Expenses", as hereinafter defined in Article V, shall be due monthly in advance on or before the fifth day of each month. Failure to pay by the fifth day of each month shall require the imposition and assessment of a "Late Charge" of FIVE DOLLARS ($5.00) and default interest accruing thereon as per paragraph 5.8 hereinafter defined. An "Escrow Assessment" shall, upon closing of the purchase of the Condominium Unit, be paid in cash in advance and in an amount of money equal to the assessments for two (2) months for such Unit as per Exhibit "B" attached hereto, plus, at such closing, the regular monthly assessment as per said Exhibit "B", may be prorated if the ownership of a Condominium Unit commences on a day other than on the 1st day of a month. The said Escrow Assessment shall be treated as a

security deposit for regular assessments and shall be repaid to the Owner upon the closing of a subsequent sale to a third party of the Condominium Unit. Such Escrow Assessments in the aggregate shall not be accounted for as "regular assessments" regarding expenditures for maintenance and repair of the Common Elements, but as a reserve for "special assessments" where deemed necessary by the Association.

5.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare and recreation of the residents in the Property and in particular for the improvement, maintenance and preservation of the Property, services, and facilities devoted to said purposes and related to the use and enjoyment of the Common Elements, and of the Apartment Units situated upon the Property. Such uses must include, but are not limited to, the cost to the Association of the following: all insurance, repair, replacement and maintenance of the Common Elements; fire, extended coverage, vandalism, malicious mischief, and liability insurance for the Condominium Units; management costs, taxes, legal and accounting fees, as may from time to time be authorized by the Association; construction of other facilities; maintenance of easements upon, constituting a part of, appurtenant to or for the benefit of the Property; mowing grass, caring for the grounds, landscaping, caring for the equipment, roofs and exterior surfaces of all Buildings; garbage pickup; pest control, outdoor lighting; security service for the Property; water, sewer, electrical and gas services furnished to the Property by or through the Association; discharge of any liens on the Common Elements; and other

charges required by this Condominium Declaration, or other charges that the Association is authorized to incur which the Association shall determine to be necessary or desirable to benefit the Owners, including the establishment and maintenance of a reserve for repair and maintenance, of those Common Elements to be replaced on regular basis which are funded from "regular" rather than "special" assessments and the special reserve described in paragraph 5.2 above, derived from Escrow Assessments which shall fund special assessments from time to time.

5.3 DETERMINATION OF ASSESSMENTS. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent or Board of Managers of the Association shall from time to time determine is to be paid by all of the Owners, to provide for the payment of all estimated expenses, defined herein as "Common Expenses", growing out of or connected with the regular maintenance and operation of the Common Elements, which sum may include, but shall not be limited to the cost of management, taxes, assessments, casualty, public liability and fire insurance (with extended coverage, vandalism and malicious mischief with endorsements attached, issued in the amount of the maximum replacement value of all of the Condominium Units), landscaping and care of grounds, common utility costs, current repairs and renovations, garbage collections, wages, legal and accounting fees, management fees, liabilities incurred by the Managing Agent or Board of Managers under or by reason of this Declaration and in the operation and maintenance of recreation and administrative facilities, the payment of any deficit remaining from a previous period for such expenses, the creation of a reasonable contingency or other reserve or reserves and other

current costs and expenses relating to the Common Elements. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification, or a release of the Owners from the obligation to pay. However, such assessments shall not exceed the monthly assessment as hereinafter provided in Paragraph 5.4.

5.4 MONTHLY ASSESSMENTS.

(a) Until January 1st of the year immediately following the conveyance of the first Condominium Unit to an Owner other than the Declarant, the monthly assessments shall be as specified on Exhibit "B", attached hereto and incorporated herein by reference for all purposes.

(b) From and after January 1st of the year immediately following the conveyance of the first Condominium Unit to an Owner, other than the Declarant, the Board of Managers may set the Monthly Assessment for the next succeeding twelve (12) month period at an amount which shall not exceed one hundred ten percent (110%) of the Monthly Assessment allowed for December of the preceding year. If the Board determines that a greater increase of the Monthly Assessment is required to adequately perform the duties and responsibilities of the association and pay all expenses thereof, then the Board may call a special meeting of the owners. By the assent of a two-thirds (2/3) vote of the quorum of owners, present at such meeting, the monthly assessment may be set at whatever level such owners approve. The new assessment shall become the basis for future annual increases, using the one hundred ten (110%) percent formula as above outlined.

(c) The Board of Managers shall have authority to lower the monthly assessment, if it deems such feasible.

5.5 SPECIAL ASSESSMENTS FOR IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Common Area, or for any other purposes of the Association, including the necessary fixtures and personal property related thereto, provided that any such assessment shall be approved by two-thirds (2/3) of the aggregate of the quorum

of Owners voting in person or by proxy at a meeting duly called for this purpose.

5.6 COMMENCEMENT OF ASSESSMENTS. The monthly assessments provided for herein shall commence as to all Condominium Units on the first day of the second month following the conveyance of the first unit to an Owner other than Declarant. Subsequent to such first conveyance by Declarant, monthly assessment may commence for each Owner of a Unit purchasing same on a "prorated" basis as per paragraph 5.1 hereof. The Board of Managers shall fix the amount of the monthly assessment against each unit at least thirty (30) days prior to January 1 of each year, provided, however, that the Board of Managers shall have a right to adjust the monthly assessment, as long as any such adjustment does not exceed the maximum permitted hereunder, with thirty (30) days written notice given to each Owner. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Managers and, unless otherwise provided or unless otherwise agreed by the Board, the Board shall collect the assessments monthly from the owner of each Condominium Unit.

5.7 NO EXEMPTION. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements, or by abandonment of his Apartment.

5.8 LIEN FOR ASSESSMENTS. All sums assessed but unpaid for the share of such assessments chargeable to any

Condominium Unit, including the Late Charge and interest thereon at ten percent (10%) per annum, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances, except only for:

(a) All taxes and special assessments levied by governmental and taxing authorities, and

(b) All liens securing sums due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the time such pro rata share of costs, charges, expenses and/or assessments become due.

To evidence such lien, the Board of Managers or Managing Agent shall prepare at the request of a first lien mortgagee, a written notice setting forth the amount of such unpaid indebtedness when same has been unpaid in excess of sixty (60) days, the name of the Owner of the Condominium Unit and a description of the Condominium Unit for any first lien mortgagee of said Unit and may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Condominium Unit, and a description of the Condominium Unit to the said Unit Owner. Such a notice shall be signed by one of the Board of Managers or by the Managing Agent and may be recorded in the Office of the Clerk and Recorder of Harris County, Texas. Such lien for the assessments shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the

notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid in the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

The amount of the assessments against each Condominium Unit shall also be a debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing same.

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

5.9 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages granted or created by the owner of any Condominium Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such unit. Sale or transfer of any Unit shall not affect the assessment lien; provided, however, that the sale or transfer of any Condominium Unit pursuant to a foreclosure under such purchase money or improvement mortgages or deeds of trust, or the acceptance by any such first mortgagee of the deed in lieu of foreclosure thereon, shall extinguish the lien of such assessments as to payments thereof coming due prior to such sale or transfer, and such mortgagee shall be exempt from any liability for unpaid

assessments as may have accrued from a point in time prior to such a foreclosure or deed in lieu of foreclosure. No sale or transfer shall relieve such Condominium Unit, or the owners thereof, from liability for any assessments thereafter becoming due or from the lien thereof.

5.10 STATEMENT OF ASSESSMENTS. Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Condominium Unit, the Association, by its Managing Agent or Board of Managers, shall issue a written statement setting forth the unpaid assessments, if any, with respect to the subject Condominium Unit, the amount of the current monthly assessments and the date that such assessment becomes due, credit for advance payments, prepaid items, (including, but not limited to, insurance premiums), or for "Escrow Assessments" which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid assessments which become due prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

Upon the sale or conveyance of a Condominium Unit, all unpaid assessments against the Owner for his prorata share of the assessments shall first be paid out of the sale price

ARTICLE VI

DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS

6.1 DESTRUCTION OR OBSOLESCENCE. This Declaration hereby makes mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction or obsolescense.

Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and accep-

tance by any Grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint MEMORIAL GROVE OWNERS' ASSOCIATION, or its successor non-profit corporation, their true and lawful attorney in their name, place, and stead, for the purpose of dealing with the Property upon its destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association, by its authorized Officer, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Condominium Unit Owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same conditions in which it existed prior to the damage, with each Apartment Unit and the Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements unless the herein below set forth percentile of Owners and 90% of the first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) Subject to the Condominium Act of the State of Texas and this Declaration, in the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-six and two-thirds percent (66-2/3%) of all of the principal structures erected upon the land, as determined by the Board of Managers, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the

proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Such deficiency assessment shall be a common expense made pro rata according to each Owner's percentage interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a Lien on his Condominium Unit and may be enforced and collected as is provided in Article V hereof. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency of the assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in following order:

(1) For payment of the balance of the lien of any first mortgage;

(2) For payment of taxes and special assessments liens in favor of any assessing entity;

(3) For payment of unpaid Common Expenses;

(4) For payment of junior liens and encumbrances in the order of any to the extent of their priority; and

(5) The balance remaining; if any, shall be paid to the Condominium Unit Owner.

(c) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than sixty-six and two-thirds percent (66-2/3%) of the principal structures erected upon the land, as determined by the Board of Managers, and if the Owners representing the aggregate ownership of sixty-six and two-thirds percent (66-2/3%) of the Common Elements or more, do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, which plan must have the approval or consent of 90% of the first mortgagees, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary, the entire remaining Premises shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plans and the By-Laws.

The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Apartment Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into one hundred thirty-eight (138) separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the number of the Apartment Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from any account to another, toward the full payment of the lien of any first mortgage against the Condominium Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each Condominium Unit Owner's percentage interest in the Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(1) through (5) of this heading, "6.1. DESTRUCTION OR OBSOLESCENCE."

(d) If the insurance proceeds are adequate for repair of the damage which is deemed in excess of sixty-six and two-thirds percent (66-2/3%) and the Owners unanimously adopt a plan for reconstruction, which plan has the approval of ninety percent (90%) of the first mortgagees, then all of the Owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a Common Expense and made pro rata according to each Owner's percentage interest in the Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in paragraph 5.8. LIENS FOR ASSESSMENTS." herein. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The proceeds derived from sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes

and in the same order as is provided in subparagraph (b)(1) through (5) of this heading, paragraph "6.1. DESTRUCTION OR OBSOLESCENCE".

(e) The Owners representing an aggregate ownership interest in excess of three-fourths (3/4) of the Common Elements or more, may agree that the Common Elements of the property are obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the Owners as Common Expenses.

(f) Subject to the provisions for unanimity of the Owners and Creditors of Owners through Section 11 of the Condominium Act of the State of Texas, Article 1301a., Vernons Annotated Statutes, to achieve a waiver of the requirements created by this Declaration, thereby regrouping or merging these perspective ownerships, the Owners representing an aggregate ownership interest in excess of three-fourths (3/4) of the Common Elements, or more, may agree that the Property is obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's authorized Officers, the entire premises shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Plans and the By-Laws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the Common Elements (unless decided otherwise by unanimous vote of the Owners), and such apportioned proceeds shall be paid into one hundred thirty-eight (138) separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association, and shall be further identified by the number of the Apartment and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in subparagraph (b) (1) through (5) of this Article.

Notwithstanding anything hereinabove to the contrary, the first lien mortgagees of the Condominium Units, if any, shall not be pre-empted from any distributions of insurance proceeds as provided for above and the Association shall notify in writing all mortgagees regarding any damage to the Property in excess of Ten Thousand ($10,000.00) Dollars and any one particular mortgagee should an Apartment Unit upon which it possesses a lien be damaged in excess of One Thousand Dollars ($1,000.00).

6.2 JUDICIAL PARTITION. There shall be no judicial partition of the project or any part thereof, nor shall Declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Paragraph 6.1 hereof in the case of damage or destruction or unless the property has been removed from the provisions of the Texas Condominium Act.

6.3 EMINENT DOMAIN. In the event of any taking of any Condominium Unit, by eminent domain, or private purchase in lieu thereof, the Owner of such Unit and his mortgagee shall be entitled to receive written notice within a reasonable period of time regarding the intent of such taking and the award for such taking as their interests may appear and, after acceptance thereof, if such Owner shall vacate his Unit by virtue of such taking, he and his mortgagee shall be divested of all interest in his Condominum Unit and all rights, titles and interests appurtenant thereto and shall be relieved of any obligations accruing or appertaining to such ownership thereafter.

Accordingly, under no circumstance shall the first lien mortgagee be pre-empted from distributions derived from condemnation as its interest shall appear.

ARTICLE VII

RIGHT OF FIRST REFUSAL

7.1 SALE OR LEASE, RIGHT OF REFUSAL. In the event any Owner of a Condominium Unit shall wish to resell the same or lease the same, and shall have received a bona fide offer there for from a prospective purchaser or tenant, the Man-

aging Agent shall be given written notice thereof together with an executed copy of such offer and the terms thereof. The Association, through the Board of Managers, or a person named by them shall have the right to purchase or lease the subject Condominium Unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, and a matching down payment or deposit is provided to the selling or leasing Owner during the fifteen (15) day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

In the event any Owner shall attempt to sell or lease his Condominium Unit without affording to the other Owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

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

In no case shall the right of first refusal reserved herein, affect the right of an Owner to subject his Condominium Unit to a trust deed, mortgage or other security instrument, or any renewal or extension thereof.

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

7.2 MORTGAGES NOT AFFECTED BY RIGHT OF FIRST REFUSAL. In the event of any default on the part of any Owner under any first mortgage made in good faith and for value, which entitled the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Paragraph 7.1 and the purchaser (or grantee under such deed in lieu of foreclosure) of such Condominium Unit shall be thereupon and thereafter subject to the provisions of this Declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the mortgage, or its nominee, the same holder or nominee may thereafter sell and convey the Condominium Unit free and clear of the provisions of Paragraph 7.1, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant, or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws, shall not be subject to the provisions of Paragraph 7.1.

If an Owner of a Condominium Unit can establish to the satisfaction of the Board of Managers that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Paragraph 7.1.

7.3 CERTIFICATE OF SATISFACTION OF RIGHT OF FIRST REFUSAL. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any Condominium Unit, the Board of Managers shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(a) With respect to a proposed lease or sale under Paragraph 7.1, that proper notice was given by the selling or leasing Owner and that the remaining Owners did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a mortgagee or its nominee in lieu of foreclosure, and a deed from such mortgagee or its nominee, pursuant to Paragraph 7.2, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Paragraph 7.1.

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of Paragraph 7.1; such a certificate shall be conclusive evidence of the facts contained therein.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 AMENDMENT. Subject to the provisions of Paragraph 2.10 and 8.2 hereof, neither this Declaration nor the Condominium Regime and percentage interests of the Owners created hereby, shall be vacated, waived, revoked, abandoned or terminated, nor shall the pro rata percentage of an Owner in the Common Elements nor the dimensions of any Condominium Unit be changed, nor shall the Common Elements be abandoned, partitioned, subdivided, encumbered, sold or transferred, nor shall any other provision of this Declaration be amended unless the Owners representing an aggregate ownership interest in excess of three-fourths (3/4) of the Common Elements, agree to such action, unless such action is allowed by a lesser percentage as specified in this Declaration, or such action requires a greater percentage under the Act. However, no amendment shall affect Declarant's right to exercise the duties and functions of the Board of Managers as allowed by Paragraph 4.1 hereof or alter or amend the rights given to Declarant in Paragraph 2.10 hereof.

8.2 OWNERSHIP OF COMMON PERSONAL PROPERTY. Upon termination of the Construction 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 entire premises and furnished by Declarant, which property is intended for the common use and enjoyment of the Condominium Unit Owners and occupants. No Owner shall have any other interest and right thereto, and all such right and interest shall absolutely terminate upon the Owner's termination of possession of his Condominium Unit.

8.3 CHANGE IN DOCUMENTS. The holder of any mortgage covering any of the Condominium Units shall be entitled to a written notification from the Association thirty (30) days prior to the effective date of any change in the condominium documents.

8.4 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 apartment number and building address of such Owner. All notices, demands or other notices intended to be served upon the Managing Agent or the Board of Managers of the Association or the Association, shall be sent by ordinary or certified mail, postage prepaid, to the Association, c/o MR. JERRY DiCARLO, 4615 Post Oak Place, Suite 195, Houston, Texas 77027, until such address is changed by a notice of address change duly recorded in the Harris County Condominium Records.

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

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

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

IN WITNESS WHEREOF, Declarant by its corporate officers, has duly executed this Declaration on this the 13th day of September, 1978.

MEMORIAL GROVE, LTD.

By: WHITE OAK DEVELOPMENT CORPORATION
General Partner

ATTEST:

Secretary

By JOHN F. PRESTON, President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared JOHN F. PRESTON, President of White Oak Development Corporation, General Partner, for Memorial Grove, Ltd., known to me to be the person whose name is subscribed to the foregoing Condominium Declaration for MEMORIAL GARDENS, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said Corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 13th day of September, 1978.

NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS.
JAMIECE ROLLON
My Commission Expires:

2-28-79