

149386

DECLARATION OF COVENANTS, Book 142 Page 190  
CONDITIONS AND RESTRICTIONS

FOR

RECORDED

✓ A.M. 11:00 P.M. \_\_\_\_\_ ✓

THE WOODLANDS

AUG 15 1983

✓ *Theresa P. Nelson* ✓

RECORDER MONROE CO., LA.

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the undersigned, hereinafter called "Declarant", is the Owner of the real property described on the attached Exhibit "A", which by this reference is made a part hereof; and

WHEREAS, Declarant desires to establish a subdivision of the real property; and

WHEREAS, Declarant does hereby establish a plan for the Ownership in fee simple of the real property described on Exhibit "A", subject to the easements, reservations, conditions, taxes, and assessments and contained in this declaration and consisting of the area contained in each of the lots located on the real property and the co-Ownership by the individual Owners thereof, as tenants in common of all of the remaining property, which property is hereinafter defined and referred to as Common Area; and

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

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

(a) "Unit" means the improvements constructed as an independent dwelling or garage Unit and located on each lot, together with all fixtures and improvements therein contained.

(b) "Lot" shall mean and refer to any parcel of land shown upon the Plat as recorded, with the approval of the Planning Department, City of Bloomington, to define specific lot lines. With respect to any single-family or garage portion of any Building that may be constructed on a part of more than one of such parcels, "Lot" shall mean and refer to the real estate conveyed in connection with such dwelling or garage Unit as designated on the Plat of the Properties.

(c) "Residential Lot" shall mean any Lot on which a residential dwelling Unit shall be constructed. Such Residential Lots shall be so designated on the Plat.

(d) "Garage Lot" shall mean any Lot on which a garage Unit shall be constructed. Such Garage Lots shall be so designated on the Plat.

(e) "Owner" means a person, persons, firm, corporation, partnership, association, or other legal entity, or any combination thereof, who own(s) an interest in one or more lots.

(f) "Common Area" shall mean all real property owned as tenants in common by all of the Lot Owners for the common use and enjoyment of Lot Owners and described in the plat of The Woodlands as recorded in the office of the Recorder of Monroe County, Indiana, less numbered Lots and named, public dedicated streets.

(g) "Declaration" means this Declaration and supplements and amendments thereto.

(h) "Subdivision" or "project" means all of the land and improvements initially submitted by this Declaration and any land and improvements which may be subsequently submitted to this Subdivision as provided in paragraph 33.

(i) "Common Expenses" means and includes (i) expenses of administration, operation and management, repair or replacement of the Common Area; (ii) Common Expenses provided for in the By-Laws of the Association; (iii) all sums lawfully assessed against the general Common Area by the Board of Directors of the Association; (iv) expenses agreed upon as Common Expenses by the Association of Unit Owners.

(j) "Homeowner's Association" or "Association" means the Association formed as a Indiana not-for-profit corporation bearing the name of Winding Brook Homeowner's Association, Inc., the Articles of Incorporation and By-Laws of which shall govern the administration of this Subdivision, the members of which Association shall be all of the Owners of the lots.

(k) "Map" or "Plat" means and includes the engineering survey of the land depicting and locating thereon all of the improvements, the lot and any other drawing or diagrammatic plan depicting a part of or all of the land and improvements thereon.

## 2. Division of Property into Lots.

(a) The real property described on Exhibit A including the improvements thereon, will be divided into twenty six fee simple residential estates (Residential Lots), which will be set forth on the plats to be filed in the office of the Monroe County Recorder. Each such estate shall consist of a separately designated Residential Lot and an undivided interest in and to

the Common Area equal to one divided by the total number of Residential Lots in the Subdivision, as may be supplemented pursuant to this Declaration.

(b) Garage Lots shall be designated on the Plats to be filed in the office of the Monroe County Recorder and shall be fee simple estates, the Ownership of which is hereby restricted and limited to an Owner of a Residential Lot in the Subdivision. The Ownership of a Garage Lot shall not entitle the Owner to any greater voting rights in the Association.

### 3. Subdivision Plat.

The Plat may be filed for record in whole or in parts, section or supplements, as construction of the Units and other improvements are substantially completed. The Plat (or any part or section thereof) depicting Units shall not be filed for record until the building in which the Units are located has been completed sufficiently in order to permit the location thereof. Each such Plat shall be filed for record prior to the conveyance of the Lots shown thereon. Each such Plat shall depict and show at least the following: The location of the Units; the location and size of the Lots; the location of all easements; and, the Lot designations and the building symbol. Each such Plat shall contain the certificate of a registered professional engineer or licensed architect or both, certifying that the Plat substantially depicts the location and measurements of the Units, the Unit designations, and building symbols. In interpreting the Plat, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Plat, from time to time, to conform the same according to the actual location of any of the constructed improvements and to establish, vacate, and relocate easements, access road easements, and on-site parking areas.

### 4. Description of Lots.

(a) Every contract for the sale of a Lot written prior to filing the record of the Plat or Declaration may legally describe the Lot by its identifying Unit designation, the building symbol, followed by the name of this subdivision. The location of such Lot shall be depicted on the Plat subsequently filed for record.

(b) Every contract, deed, lease, mortgage, trust deed, will, or other instrument may legally describe a Lot by its identifying Unit designation, the building symbol, followed by the name of this Subdivision, with further reference to the Plat and Declaration filed for record. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Lot, but also the Common Area appurtenant thereto. Each such description

shall be construed to include a perpetual non-exclusive easement for ingress and egress to and from an Owner's Unit, to and from the public road, and use of the Common Area appurtenant to each Unit.

(c) The reference to the Plat and Declaration in any instrument shall be deemed to include any supplements to the Plat or Declaration without specific reference thereto.

5. Form of Ownership - Title.

A Lot may be held and owned in any real property tenancy relationship recognized under the laws of the State of Indiana.

6. Inseparability of a Lot.

Each Lot and the appurtenant undivided interest in the Common Area shall together comprise one Lot, shall be inseparable and may be conveyed, leased, devised, or encumbered only as a Lot.

7. Separate Assessment and Taxation of Lots - Notice to Assessor.

Declarant shall give written notice to the County Assessor of the creation of real property Ownership interests in this property, as is provided by law, so that each Lot and the undivided interest in the Common Area appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation.

8. Non-Partitionability of Common Area.

The Common Area shall be owned in common by all of the Owners of the Lots and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Area.

9. Easements for Encroachments.

In the event that any portion of the Common Area encroaches upon any Unit or Units; or in the event that any portion of a Unit encroaches upon any other Unit or Units or upon any portion of the Common Area, or in the event any encroachment shall occur in the future as a result of: (i) settling of a building; or (ii) alteration or repair to the Common Area; or (iii) repair or restoration of a building(s) or a Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings; a valid easement shall exist for the encroachment and for the maintenance of the same so long as the Building(s) stands or encroachment exists. In the event that any one or more of the Units or Buildings or other improvements comprising part of the Common Area is partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment does exist. Such encroachments

and easements shall not be considered or determined to be encumbrances either on the Common Area or on the Lots for purposes of marketability of title or other purposes. In interpreting any and all provisions of the Declaration, subsequent Lot deeds to and/or mortgages of Lots, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered notwithstanding any minor deviations, either horizontally, vertically, or laterally from the location of such Unit indicated on the Plat.

10. Termination of Mechanic's Lien Rights and Indemnification.

Subsequent to the completion described on the Plat, no labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Unit Owner, his agent, his contractor or subcontractor shall be a basis for filing of a lien against the Common Area or against the Unit of any other Unit Owner who did not expressly consent to or request the services or materials. 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 Unit of any other Owner or against the Common Area for construction performed or for labor, materials, services, or other products incorporated in an Owner's Unit at such Owner's consent or request. The provisions herein contained are subject to the reserved rights as set forth in paragraph 13.

11. Administration of the Association.

(a) The interests of all Owners of Lots shall be governed and administered by the Articles of Incorporation and By-Laws of the Association.

(b) An Owner of a Lot upon becoming an Owner, shall be a member of the Association and shall remain a member for the period of his Ownership.

(c) The Association, by its first Board of Managers, shall obtain and pay for the services of a managing agent.

12. Certificate of Identity of Management Body to be Recorded.

There shall be recorded from time to time a Certificate of Identity and the addresses of the persons then comprising the management body (Directors and Officers) together with the address of the resident manager, and Managing Agent, if any. Such Certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of time elapsed since the date thereof. The first such Certificate shall be recorded prior to the first conveyance of a Lot and consist of the Articles of Incorporation of the Association which shall be deemed to designate the Directors of the Association as the management body.

13. Access to Units for Maintenance, Repairs, and Emergencies.

(a) The Association shall have the irrevocable right, to be exercised by the resident manager, Managing Agent, or Board of Directors of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Area therein or accessible therefrom; provided, however, that such rights of access shall be immediate for making emergency repairs therein in order to prevent damage to the Common Area or to another Unit. Equipment, facilities or fixtures within any Lot and serving or affecting other Lots shall be considered Common Area.

(b) Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Area or as a result of emergency repairs within another Unit shall be a common expense of all of the Owners; provided, however, that if such damage is caused by negligent or tortious act of a Unit Owner, members of his family, his agent, employees, invitee, licensee, or tenant, then such Unit Owner shall be responsible and liable for all of such damage. All maintenance, repairs, and replacements of the Common Area, whether located inside or outside of Units (unless necessitated by the negligence, misuse, or tortious act of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be the common expense of all of the Owners.

14. Owner's Maintenance Responsibility for His Unit.

(a) For maintenance purposes, an Owner shall be obligated to keep in good repair and condition the supporting walls, the materials such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, which make up the finished surfaces or the perimeter walls, ceilings, and floors within his Unit, including Unit doors and windows. The lines, pipes, wires, conduits, or systems (which for brevity are herein and hereafter referred to as utilities) running through his Unit which serve one or more other Units are Common Area. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board of Directors. An Owner's right to repair, alter, and remodel the interior of his Unit shall be coupled with the obligation to replace any finished or other materials removed with similar or other types or kinds of materials of at least the same quality.

(b) An Owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in good repair and condition by the Owner thereof; provided, however, that if any such fixtures and equipment are damaged as a result of an external force or cause, and if such damage is not covered by insurance, the cost of repair shall be an

Association expense (a common expense of all of the Lot Owners). An Owner shall do no act nor any work that will impair or damage the structural soundness or integrity of the building or impair any easement or heriditament. An Owner shall always keep the Common Area appurtenant to his Unit in a clean and sanitary condition and shall not use nor permit use thereof in such a manner as will be offensive to another Owner of reasonable sensitivities.

15. Maintenance by the Association.

(a) The maintenance and operation of the Common Area shall be the responsibility and the expense of the Association and a common expense of all of the Lot Owners. This specifically includes all snow removal and road maintenance for all interior roads and parking areas designated on the Plat.

(b) In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior buildings surfaces, trees, shrubs, grass, walks, and other exterior improvements. (Such exterior maintenance shall not include glass surfaces, screens and screen doors, exterior door and window fixtures and other hardware and patios, or the care of any vegetable or flower garden.) In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, as determined by the Board of Directors of the Association, and not covered or paid for by insurance on such Lots, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

(c) The Association shall hire a chimney sweep to inspect every chimney flue in the Project at least once a year, the cost of said inspection to be paid by the Association as a Common Expense. If in the opinion of the chimney sweep a flue needs cleaning, the cleaning will be immediately completed and the cost charged to the individual Unit Owner as a special assessment.

(d) There shall be no additions, alterations, or improvements of or to the Common Area by the Association requiring an assessment in excess of Fifty Dollars per Unit in any one calendar year without prior approval of a majority of the Owners. Such approval shall be expressed by a vote in favor thereof by the Owners of a majority at a special or regular meeting of Association members. Such expenditure(s) shall not be applicable to the replacement, repair, maintenance, or obsolescence of any Common Area or common personal property.

16. Compliance with Provisions of Declaration Mandatory.

Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and

the Rules and Regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully adopted and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Board of Directors in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner.

17. Revocation or Amendment to Declaration.

Except as is otherwise provided, this Declaration shall not be revoked unless all of the Owners and all of the holders of any recorded first mortgage or first deed of trust covering or affecting any or all of the Residential Lots in the Subdivision consent and agree to such revocation by instrument(s) duly recorded. This Declaration shall not be amended unless the Owners representing an aggregate Ownership interest of 66 2/3 per cent, or more, of the Common Area in the Subdivision and all of the holders of recorded first mortgages or deeds of trust consent and agree to such amendments by instrument(s) duly recorded; provided, however, that the undivided interests in the Common Area appurtenant to each Unit shall have a permanent character and shall not be altered without the consent of all of the Unit Owners and all of the holders of recorded first mortgages or first deeds of trust as expressed in an amended Declaration duly recorded.

18. Assessment for Common Expenses.

(a) All Owners shall be obligated to pay the estimated assessments imposed by the Board of Directors of the Association to meet the Common Expenses. The Common Expenses shall be assessed equally among all of the Residential Lots. Assessments for the estimated Common Expenses shall be due in advance on the first day of each calendar month, or less frequently as may be determined by the Board of Directors. The statements for Common Expenses shall be prepared and delivered or mailed to each Owner.

(b) The date of the commencement of monthly assessments provided for herein for each Residential Lot shall be thirty (30) days following the receipt of the Certificate of Occupancy for each dwelling Unit located on any Residential Lot from the applicable governmental authority.

(c) In the event the Ownership of a Residential Lot, title to which is derived from Declarant, commences on a day other than the first day of the assessment period, the assessment for that period shall be prorated.

(d) Assessments shall be based upon the cash requirements deemed to be such aggregate sum as the Board of Directors to be paid by all of the Lot Owners, to provide for the payment of all estimated expenses growing out of or connected with the



maintenance, repair operation, additions, alterations and improvements of and to the Common Area, which sum may include, but shall not be limited to, expenses of management, resident manager compensation, taxes and special assessments until separately assessed; snow removal and road repairs; premium for insurance; landscaping and care of grounds; common water and sewer charges; liabilities incurred by the Managing Agent, resident manager, or Board of Directors on behalf of the Unit Owners under or by reason of this Declaration and the Articles of Incorporation and By-Laws of the Association; for a deficit remaining from a previous period; for the creation of a reasonable contingency, reserve, working capital and sinking funds as well as other costs and expenses in relation to the Common Area.

(e) The Association shall have the authority to assess Garage Lot Owners a special assessment fee which represents the estimated electric use in the Garage Lot as determined by the public utility supplying the electricity.

(f) The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or a release of the Owner's obligation to pay the same.

#### 19. Insurance.

(a) The Board of Directors or Managing Agent shall obtain and maintain, to the extent obtainable, the following insurance: (i) fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring the entire Subdivision improvements and any other property, the nature of which is Common Area (including all of the Units, fixtures therein initially installed by the Declarant but not including furniture, fixtures or other personal property supplied by or installed by Unit Owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation, and which shall contain a standard non-contributory mortgage clause in favor of each mortgagee of a Unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Board of Directors hereinafter set forth in paragraph 24; (ii) public liability insurance in such limits as the Board of Directors may from time to time determine, covering each member of the Board, Resident Manager and the Managing Agent and each Unit Owner. Such public liability coverage shall also cover cross liability claims of one insured against the other.

(b) All policies of public liability insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least ten days'

prior written notice to all of the insured, including mortgagees. Duplicate originals of all policies and renewals thereof together with proof of payments of premiums shall be delivered to all mortgagees at least ten days to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Lot Owners, which policy or policies shall identify the interest of each Lot Owner (Owner's name, Unit number, and building designation).

(c) Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors shall make a determination of the full replacement value of the entire Subdivision improvements, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this Insurance paragraph. In no event shall the insurance policy contain a co-insurance clause for less than ninety (90) per cent of the full replacement cost. The Board of Directors shall have the entire Subdivision improvements reappraised annually for the purpose of maintaining full replacement cost insurance as required by sub-paragraph 19 (a) above.

(d) The insurance policy or policies shall name the Association as the insured, as attorney-in-fact for all of the Lot Owners.

#### 20. Owners' Personal Obligation for Payment of Assessments.

The amount of the Common Expenses assessed against each Lot shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit. The Board of Directors shall have the responsibility to take prompt action to collect any unpaid assessments which remain unpaid for more than 15 days from the due date for payment thereof. In the event of default in the payment of the assessment, the Unit Owner shall be obligated to pay interest at the rate of fourteen percent per annum on the amount of the assessment from due date thereof, together with all expenses, including attorney's fees, incurred together with such late charges as provided by the By-Laws of Rules and Regulations of the Association. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing the lien, nor shall such suit be construed to be a waiver of the lien.

#### 21. Association Lien for Nonpayment of Common Expenses.

(a) All sums assessed but unpaid for the share of Common Expenses chargeable to any Lot shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for tax and special assessment liens on the Lot in favor of any assessing Unit, and all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as

may be provided by such encumbrances. To evidence such lien, the Board of Directors, the Managing Agent or Resident Manager shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name or the Owner of the Lot and a description of the condominium Unit. Such a notice of lien shall be signed by one of the Board of Directors or by one of the officers of the Association or by the Managing Agent or Resident Manager on behalf of the Association and shall be recorded in the office of the County Clerk and Recorder. Such lien shall attach and be effective from the due date of the assessment until all sums, with interest and other charges thereon, shall have been fully paid.

(b) Such lien may be enforced by the foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property upon the recording to a notice of claim thereof. In any such proceedings, the Owner shall be required to pay the costs, expenses, and attorney's fees incurred for filing the lien, and in the event of foreclosure proceedings, all additional costs, all expenses, and reasonable attorney's fees incurred. The Owner of the Lot being foreclosed shall be required to pay to the Association the monthly common assessment for the Lot during the period of foreclosure, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant thereto, convey, or otherwise deal with the same.

(c) Any mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Unit, and upon such payment, such encumbrancer shall have a lien on such Unit for the amount paid in the same rank as the lien of his mortgage or encumbrance without the necessity of having to record a notice or claim of such lien. The Association shall report to the mortgagee of a Lot any unpaid assessment remaining unpaid for longer than thirty days after the same is due; provided, however, that a mortgagee shall have furnished to the Association notice of such encumbrance.

(d) The recorded lien may be released by recording a Release of Lien to be signed by an officer of the Association on behalf of the Association.

## 22. Ascertainability of Unpaid Common Expenses.

(a) Upon written request for a Statement of Account by an Owner or his agent, prospective mortgagee or prospective grantee of a Lot, the Association by an Officer, Managing Agent, or Resident Manager shall furnish a written statement of the amount of any unpaid Common Expenses, the amount of the current assessments, the dates that assessments are due, the amount for any advanced payments made, prepaid items such as insurance

premiums and reserves therefore and any deficiencies in reserve accounts, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request shall be complied with within fifteen days after receipt of such written request, all unpaid Common Expenses which became due prior to the date of such request shall be subordinate to the rights of the person requesting such statement. A service fee of not more than Seventy-Five Dollars shall be paid for furnishing the Statement of Account.

(b) The provisions set forth in this paragraph shall not apply to the initial sales and conveyances of the Lots made by Declarant, and such sales shall be free from all Common Expenses to the date of conveyance made or to a date as agreed upon by Declarant and Declarant's grantee.

(c) Notwithstanding any other terms and provisions of this Declaration, in the event of a default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to such first mortgagee in lieu of foreclosure shall be made free and clear of any lien granted to the Association herein. Further, no first mortgage shall be liable for any unpaid common expense assessments accruing prior to the time such mortgagee becomes the Owner of a Lot pursuant to the remedies provided in its mortgage, whichever event is last.

23. Priorities of Association Lien for Common Expenses.

The Owner of a Lot may create a junior mortgage (junior to the lien, deed of trust, or other encumbrance of a first mortgage), liens or encumbrances on his Lot; provided, however, that any such junior mortgages, liens, or encumbrances shall always be subordinate to the prior and paramount lien of the Association for Common Expenses and all of the terms, conditions, covenants, restrictions, uses, limitations, and obligations under this Declaration, Association Articles of Incorporation, and By-Laws and provided, further, that such junior encumbrancer(s) shall release, for purposes of restoration of any improvements upon the encumbered Lot, all of his right, title, and interest in and to the proceeds under all insurance policies upon said premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

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24. Destruction, Damage, or Obsolescence - Association as Attorney-in-fact.

This Declaration does hereby make mandatory the irrevocable appointment of The Association as an attorney-in-fact to deal with the property upon its destruction or damage, for its repair and reconstruction or its obsolescence and to maintain, repair,

and improve the Lots, buildings, and Common Area. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place, and stead for the purpose of dealing with the property upon its damage or destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers or agents, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of a Lot Owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the Common Area having substantially the same vertical and horizontal boundaries as before. The proceeds for any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction, or replacement unless the Owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s). Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty percent of the total replacement cost of all of the Lots in this Subdivision, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Lots. Such deficiency assessment shall be a common expense and made pro rata according to the total number of Units in the Subdivision and shall be due and payable within thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement, or restoration of the improvement(s) using failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner, a lien on his Lot and may be enforced and collected as is provided in paragraph 21. In addition thereto,

the Association, as attorney-in-fact, shall have the absolute right and power to sell the Lot of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Lot of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this paragraph. Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of fourteen percent per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such Lot shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

1. For payment of taxes and special assessment liens in favor of any assessing entity and the customary expense of sale;
2. For payment of the balance of the lien of any first mortgage;
3. For payment of unpaid Common Expenses and all costs, expenses, and fees incurred by the Association.
4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
5. The balance remaining, if any, shall be paid to the Lot Owner.

(c) If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s), and if such damage is more than sixty percent of the total replacement cost of all of the Lots in this Subdivision, not including land, and if the Owners representing an aggregate Ownership interest of fifty-one percent, of the total number of Units in the Subdivision do not voluntarily, within one hundred twenty days thereafter, make provisions for repair, replacement, and reconstruction, which plan must have the approval or consent of seventy percent, or more, of the first mortgagees of record, then 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 or Assistant Secretary, the entire remaining premises shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat, Articles of Incorporation and the By-Laws. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be paid into separate accounts, each such account representing one of the Lots. Each such account shall be in the name of the Association, and shall be further identified by the Lot designation and the name of

the Owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount (of each) of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgagee against the Lot represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be made pro rata based upon the total number of Units in the Subdivision. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b) 1 through 5 of this paragraph.

(d) In the event of such damage or destruction under subparagraph (c) of this paragraph, and if a plan for repair, replacement, and reconstruction is adopted as therein provided, 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 the total number of Units in the Subdivision and shall be due and payable as provided by the terms of such plan, but not sooner than thirty days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement, or restoration of improvements using all of the insurance proceeds for such purposes, notwithstanding the failure of an Owner to pay the assessment. Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot and may be enforced and collected as is provided in paragraph 21. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Lot 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 Lot of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such Lot 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 paragraph.

25. Registration of Mailing Address.

Each Owner shall register his mailing address with the Association, any notices or demands intended to be served upon an Owner shall be sent by mail, postage prepaid, addressed in the name of the Owner at such registered address.

The separate Lots estates created by this Declaration and the Plat shall continue until this Declaration is revoked in the manner and as is provided in paragraph 17 of this Declaration, or until terminated in the manner and as is provided in subparagraph (c) or (f) of paragraph 24 of this Declaration.

27. Condemnation.

If at any time or times during the continuance of the Lot Ownership pursuant to this Declaration, all or any part of the Subdivision shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

(a) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award" shall be payable to the Association.

## (b) Complete Taking.

(1) In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Lot Ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the same basis of each Lot Unit Owner's interest in the Common Area, provided however, that if a standard, different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

(2) On the basis of the principle set forth in the last preceding paragraph, The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Sub-paragraph 26 (b), (1) through (5).

(c) Partial Taking. In the event that less than the entire Subdivision is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the Lot Ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: as soon as practicable the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to taking of or injury to the Common Area, shall be apportioned among the Owners on the basis of each Owner's interest respectively in the Common Area; (ii) the total amount allocated to severance damages shall be apportioned to those Lots which were not taken or condemned; (iii) the respective amounts allocated to the taking of or injury to a particular Unit and to the improvements an Owner has made within



(a) The property is hereby restricted to single-family residential uses related to the convenience and enjoyment of such residential use. No buildings and structures shall be moved from other locations onto said premises, and no buildings other than buildings shown on the Plat (filed or to be filed) shall be erected or constructed on the property except by vote of a majority in interest of the Lot Owners. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used or permitted to be kept or stored on any portion of the premises at any time either temporarily or permanently.

(b) Notwithstanding any provisions contained to the contrary, it shall be expressly permissible for the Declarant, its agents, employees, and contractors to maintain during the period of construction and sale of the Lots, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale or rental of Lots and interests, including, but without limitation, a business office, storage area, construction yards, signs, model Units, sales office, construction office, parking areas, and lighting.

(c) No advertising signs, including a "For Rent" or "For Sale" sign, nor billboards, unsightly objects or nuisances shall be erected, placed, or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health, or unreasonably disturb the Owner of any Lot or any occupant thereof. Except as provided that the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and maintenance of buildings and improvements, if any, of the Declarant, its agents, contractors and assigns during the construction and sale and rental period and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

(d) No nuisances shall be allowed on the Subdivision property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the property by its resident. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage be allowed to accumulate nor any fire hazard to exist. No Unit Owner shall permit any use of his Unit or make use of the Common Area which will increase the rate of insurance upon the Subdivision. The Association shall adopt By-Laws and Rules and Regulations relative to abatement and enjoiment of nuisances.

(e) No immoral, improper, offensive, or unlawful use shall be permitted on or made of the Subdivision or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

(f) Rules and regulations may be adopted by the Board of Directors concerning and governing the use of the Common Area. Such rules and regulations shall be furnished to Unit Owners prior to the time that they become effective. Such rules and regulations shall be uniform and non-discriminatory.

(g) Except as otherwise provided in this Declaration and except for those improvements erected or installed by Declarant and additions thereto under and by Supplement, no exterior additions, alterations or decorating to any buildings, nor changes in fences, hedges, walls and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, heights, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the Subdivision by the Board of Directors of the Association or by a representative designed by the Board.

32. Association Right to Acquire Additional Property.

The Association may acquire by purchase or otherwise and hold for the benefit of all of the Lot Owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the Lot Owners, and such interest therein shall not be transferable except with a conveyance of a Lot. The conveyance of a Lot shall transfer to the grantee Ownership of the grantor's beneficial interest in all such property interest without any reference thereto in the deed. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Lot without any reference thereto in the deed.

33. General Reservations.

(a) Declarant reserves the right to establish easements, reservations, exceptions, and exclusions consistent with the Lot Ownership of the Subdivision and for the best interests of all of the Lot Owners, including the Declarant, in order to serve the entire Subdivision.

(b) Notwithstanding any other provisions expressed or implied to the contrary contained in the Declaration, the Articles of Incorporation or By-Laws of the Association, Declarant reserves the right to exercise the rights, duties, and functions of the Board of Directors of the Association until 33 Lots have been sold or June 1, 1985, whichever shall first occur.

34. Reservation to Enlarge and Supplement the Subdivision.

(a) Declarant, for itself, its successors and assigns, expressly reserves the right to enlarge this condominium Subdivision by submitting additional real property (which is

described on Exhibit B attached hereto and incorporated herein by reference) and recorded Supplement to this Declaration and by filing for record an additional section or supplement to the Plat. The reference to the Plat and Declaration in any instrument shall be deemed to include any supplements to the Plat and Declaration without specific reference thereto. This right to enlarge and supplement this Subdivision shall remain in existence for ten (10) years from the date of the recordation of these Declarations, at which time, such right shall lapse and be of no further force and effect.

(b) Such Supplements to this Declaration shall provide for a division of such additionally submitted real property and improvements to Lots. Each Unit shall be separately designated, and each building shall be identified by a symbol or designation dissimilar to any other building in the Subdivision. All Owners of Lots in this Subdivision, as may be expanded, shall have a non-exclusive right in common with all of the other Owners to use the sidewalks, pathways, driveways, recreational facilities and all other Common Area within this entire Subdivision so designated on the Plat and all amendments and Supplements thereto.

(c) Except as may be otherwise provided by the provision of such Supplement(s) to this Declaration, all of the provisions contained in this declaration shall be applicable to such additional Lots submitted to this Subdivision.

(d) As additional Lots are submitted to this Subdivision and in order that the Common Expenses of this Subdivision be shared proportionately and equitably by the Owners of the initially submitted Lots and the Owners of all subsequently submitted additional Lots, the Common Expenses shall be prorated, based upon the number of Lots owned by each Owner in the Project. Further, each Lot, regardless of the number of Owners, shall be entitled to one vote for all purposes hereunder and shall not change by the enlargement of the Subdivision or otherwise.

(e) Each Owner shall have the non-exclusive right, together with all other Owners, to use all common areas, open spaces, recreational facilities, grass and landscaping areas and all other areas in the Project which are not herein specifically dedicated to the use of less than all of the Owners. This easement shall be irrevocable and shall be for the purposes of egress and ingress, recreational and social use and shall apply to all property hereafter committed to this Subdivision.

(f) It is contemplated that additional lands or air space reflected on Exhibit B will ultimately be committed to this Project, but the Declarant, its appointees, successors and assigns, shall have no affirmative obligation to do so. The rights of the Declarant, its appointees, successors and assigns, as described in Paragraph 31 hereof, shall apply to all properties which are added to this Project in accordance with

these provisions relating to enlargement thereof. Therefore, by way of example, the Declarant, its appointees, successors, and assigns shall manage the entire Subdivision until such time as all of the Lots in the entire Project as enlarged, from time to time, are sold, or January 1, 1985, whichever shall first occur.

35. Title Subject to Declarant's Reservations.

Title to and Ownership of each Lot is expressly subject to the reservations set forth in this Declaration.

36. Acceptance of Provisions of All Documents.

A Contract for Purchase and the conveyance or encumbrance of a Lot shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles of Incorporation and Association By-Laws, and Rules and Regulations, and shall be binding upon the purchaser, grantee or encumbrancer without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance.

37. General.

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

(b) "Declarant" or "Declarants" as used herein means the named Declarant, its successors and assigns.

(c) The provision of this Declaration shall be in addition to and supplemental to all provisions of law.

(d) Paragraph titles are for convenience of reference and are not intended to limit, enlarge, or change the meaning of the contents of the various paragraphs.

(e) Until January 1, 1985, the following actions will require the prior approval of the Federal Housing Administration or the Veteran's Administration: the acquisition of additional real property by the Association, dedication of Common Area, and amendment of this Declaration.