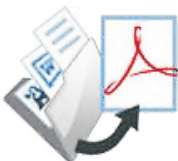


DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TOWNE PARK  
A PLANNED RESIDENTIAL COMMUNITY

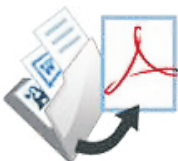
THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 12th day of April, 1984, by TOWNE PARK, INC., a Nevada Corporation (herein "Declarant Towne") and THE REGENTS OF THE UNIVERSITY OF NEW MEXICO, a body corporate of the State of New Mexico (herein "Master Ground Lessor"), which said parties are hereinafter sometimes collectively called "Declarants", WITNESSETH:

RECITALS

1. On January 12, 1983, Master Ground Lessor and Towne Development Company, a California corporation (herein "Towne Development") entered into that certain "Towne Park Master Ground Lease" (herein "the Master Ground Lease") as to which that certain "Memorandum of Lease" dated August 19, 1983 was recorded on August 24, 1983 in Book Misc. 42A, page 63 of the Records of Bernalillo County, New Mexico.
2. The Master Ground Lease creates a leasehold estate in certain real estate situate in Bernalillo County, New Mexico, as more particularly described on Exhibit I attached hereto and incorporated herein by reference, for a term of sixty-eight and one-half (68 1/2) years from the "commencement date" as therein defined. The term of the leasehold estate created by the Master Ground Lease expires on February 28, 2052.
3. The Master Ground Lease contemplates that Towne Development, or its successors in interest and assigns, will develop the real estate described on Exhibit I as a planned residential community pursuant to a general plan of development to consist of not to exceed 528 single family residential lots together with common areas, recreational and other facilities; that such development will be constructed in phases as market considerations dictate; that a homeowner's



- association will be formed as to each such phase (or that a single homeowner's association will be formed for all phases) to own and manage the leasehold estate in the common areas and facilities thereof; and that a leasehold estate in each platted lot and any dwelling or other improvements to be constructed thereon for the then remaining term of the Master Ground Lease will be sold and transferred to third parties pursuant to a Unit Lease with Master Ground Lessee and that, thereupon, the Master Ground Lease will terminate as to any such platted lot and will be superseded and replaced by the Unit Lease for such platted lot.
4. Pursuant to the general plan of development, that certain Plat for Towne Park Subdivision was filed and recorded with respect to the real estate described on Exhibit I is the Office of the County Clerk of Bernalillo County, New Mexico, on August 29, 1983 (herein "the Initial Plat"). The first portion of the real estate to be developed and sold is identified on the Initial Plat as Phase I and all lots and common areas and facilities therein are more particularly described on Exhibit II attached hereto and incorporated herein by reference (herein "Phase I"). Phase I includes 104 platted single-family residential lots.
  5. The Master Ground Lease permits Towne Development, subject to the provisions of Article 22 thereof, to transfer and assign its leasehold estate under the Master Ground Lease in a portion of the real estate to another person or entity which will or may develop and sell that portion of the real estate pursuant to the general plan of development. Pursuant to that certain Assignment of Master Ground Lease recorded August 31, 1983, in Book Misc. 43A, page 940, Records of Bernalillo County, New Mexico, Towne Development transferred and assigned its leasehold estate and interest in Phase I to Declarant Towne. Declarant Towne intends to develop Phase I and to sell Unit Leases in the 104 platted lots contained herein.
  6. As contemplated and permitted by the Master Ground Lease, Towne Development or its assignees, including Declarant Towne, may elect to annex additional portions of the real estate described on Exhibit I pursuant to Article X hereinbelow with the purpose and



effect of subjecting such additional real estate to the covenants, conditions, restrictions, easements, encumbrances, liens, servitudes and appurtenances contained herein and created by this Declaration.

7. The reversionary fee interest of Master Ground Lessor under the Master Ground Lease is prior, superior and paramount to the leasehold estate of Towne Development, Declarant Towne, all lessees under the Unit Leases and their respective heirs, personal representatives, successors in interest and assigns. However, Master Ground Lessor has agreed to join in this Declaration in order to subject its reversionary fee interest in Phase I, and any additional portions of the real estate described on Exhibit I subsequently annexed, to the provisions of this Declaration, BUT ONLY until expiration of the Master Ground Lease on February 28, 2052, at which time this Declaration shall automatically cease and terminate and be of no further force or effect as hereinafter provided.

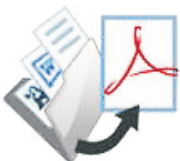
NOW, THEREFORE, Declarant Towne and Master Ground Lessor hereby submit and subject the real estate within Phase I, as more particularly described on Exhibit II, and all improvements now or hereafter constructed thereon to the terms, provisions, covenants, conditions, restrictions, easements, encumbrances, liens, servitudes and appurtenances set forth in and created by this Declaration, all of which shall constitute covenants running with the Land and burdens and benefits enforceable by or against any person now or hereafter owning any right, title, interest or estate in Phase I, or any further portions of the real estate described on Exhibit I subsequently annexed, including without limitation Master Ground Lessor, the Association, the Developer, all Unit Lessees and the tenants and sublessees of Unit Lessees.

## ARTICLE I

### DEFINITIONS

Section 1. As used in this Declaration the following words and phrases have the meanings set forth below:

1.1 "Additional Phase(s)" means such additional portions of the Annexable Property as may subsequently be annexed and made subject to this Declaration pursuant to Article X.



1.2 "Adjoining Lots" means those platted lots in Phase I shown on the Initial Plat, and those platted lots shown on any Supplemental Plat filed in connection with the annexation of Additional Phases, which abut or are adjoined on both their side boundaries by another platted lot.

1.3 "Annexable Property" means the real estate described on Exhibit I, except Phase I, which real estate, or portions thereof, may be hereafter annexed by the Developer and Master Ground Lessor.

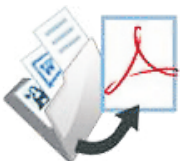
1.4 "Annexation" means the process pursuant to which Additional Phases are annexed and made subject to this Declaration as provided in Article X.

1.5 "Articles" mean the Articles of Incorporation of the Association and any amendments thereto.

1.6 "Association" means, as to Phase I, the TOWNE PARK HOMEOWNERS ASSOCIATION, INC., a New Mexico non-profit corporation, its successors in interest and assigns, formed to own and manage the leasehold estate in the Common Areas and Facilities in Phase I created under the Master Ground Lease. In the event that Additional Phases are annexed and made subject to this Declaration, the Developer may form additional New Mexico non-profit corporations to own and manage the leasehold estate in the Common Areas and Facilities created under the Master Ground Lease in such Additional Phases and, if so, the term "Association" shall also refer to such additional New Mexico non-profit corporations to be formed. Alternatively, the Developer may elect to have the Towne Park Homeowners Association, Inc. own and operate the leasehold estate in the Common Areas and Facilities of Phase I and all Additional Phases subsequently annexed. The Developer's election to have Towne Park Homeowners Association, Inc. act as the Association for any Additional Phases shall be effected by the transfer and conveyance of Developer's leasehold interest in the Common Areas and Facilities in any such Additional Phases from Developer to Towne Park Homeowners Association, Inc.

1.7 "Board" means the Board of Directors of the Association.

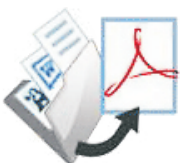
1.8 "By-Laws" means the By-laws of the Association dated March 28, 1964, a copy of which is attached hereto as Exhibit III and incorporated herein by reference, and any



amendments thereto. The incorporation of the By-Laws as part of this Declaration is for informational purposes only and does not create any requirement that this Declaration be amended in order to amend the By-laws, unless the nature of any such By-law amendment is such that it constitutes a change with respect to the terms and provisions of this Declaration thereby necessitating an amendment to this Declaration.

1.9 "Common Area and Facilities" mean and include: (i) all real estate within Phase I, or any Additional Phases subsequently annexed, except and excluding all platted lots shown on the Initial Plat of Phase I or shown on any Supplemental Plats filed in connection with the annexation of Additional Phases (herein "the Common Areas"); and (ii) all improvements and fixtures now or hereafter constructed upon or affixed to the Common Areas and any personal property now or hereafter owned by the Association (herein "the Common Facilities"). In the event that the Developer shall, in its sole discretion, decide not to develop and sell any platted lot within Phase I or any Additional Phase subsequently annexed, Developer may transfer and assign its leasehold estate in any such platted lot by a recorded assignment to the Association and, thereupon, any such assigned platted lot shall thereafter become and constitute a part of the Common Areas and Facilities.

1.10 "Common Expenses" mean and include all costs and expenses incurred by or on behalf of the Association for the benefit of the Common Areas and Facilities or the Unit Lessees, including, without limitation: (i) all costs to maintain, repair and restore the Common Areas and Facilities, including the cost to establish and maintain the Replacement Reserve for periodic maintenance and replacement as required by this Declaration; (ii) the payment of insurance premiums for comprehensive public liability insurance, fire and extended coverage insurance, flood insurance, fidelity bonds, workmen's compensation insurance and other insurance required by this Declaration or which the Board elects to procure and maintain; (iii) the cost of electricity, gas, water, and sewer, garbage disposal, cable TV, telephone and other communication systems, security alarm systems, and other utility services of every nature to the Common Areas and Facilities as to all Units on a mandatory or voluntary basis through master meters or otherwise; (iv) the payment of management fees and expenses; payable to the professional management



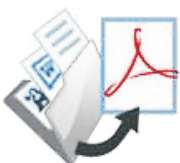
company required by this Declaration; (v) the payment of wages and salaries, federal and state withholding taxes, employee and employer social security taxes and other customary payroll items with respect to any onsite management, security, janitorial, landscaping or other personnel which the Board may elect to hire in connection with the operation and management of the Association or the Common Areas and Facilities; (vi) the payment of all ad valorem, real estate and personal property taxes and special assessments for public improvements with respect to the Common Areas and Facilities; (vii) the payment of fees to accountants, attorneys and other third parties which supply services to the Association; and (iii) all other costs and expenses of every nature paid or incurred in connection with the operation and management of the Association and the Common Areas and Facilities.

1.11 "Conversion" means, as to Phase I and any Additional Phase, the date on which all the following has occurred: (i) such Phase is annexed to and made subject to this Declaration; (ii) the first Unit Lease in such Phase is sold and transferred to a third party by the Developer; and (iii) the Developer records an assignment of its leasehold estate in the Common Areas and Facilities of such Phase to the Association. Upon conversion the Association becomes the Master Ground Lessee under the Master Ground Lease with respect to the Common Areas and Facilities of the converted Phase, the Developer continues to be the Master Ground Lessee with respect to any Units which the Developer still owns and the Master Ground Lease is terminated and superseded by the Unit Leases then or thereafter entered into between the Master Ground Lessor and the Unit Lessee with respect to Units sold and transferred by the Developer.

1.12 "Declarant Towne" means TOWNE PARK, INC., a Nevada corporation qualified to transact business in New Mexico as a foreign corporation, and its successors in interest and assigns.

1.13 "Declaration" means this "Declaration of Covenants, Conditions and Restrictions for Towne Park, a Planned Residential Community" and any amendments thereto.

1.14 "Default Interest Rate" means the rate of interest which will begin to accrue upon the failure of any Unit Lessee to pay any Regular Monthly Assessments, Special Assessment, Individual Assessment, Ground Rent Reserve



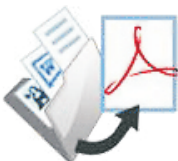
payment or other payment of any nature required to be paid to the Association pursuant to this Declaration. The Default Interest Rate shall be the greater of fifteen percent (15%) per annum or the floating rate of interest equal to one and one-half percent (1 1/2%) above the "New York Prime Rate" published in the Wall Street Journal as of the first (1st) business day of each calendar month.

1.15 "Deficit Amount" means the amount of any monthly payment which the Developer is required to pay to the Association pursuant to Section 12.3 of Article XII to defray the Operating Expenses of the Association to the extent that the Operating Expenses exceed the Total Revenues and Working Capital Reserve of the Association, until such time as the Developer elects by written notice to the Association to commence the payment of all assessments required to be paid by Unit Lessees with respect to Units owned by the Developer.

1.16 "Developer" means, as to Phase 1, Declaring Towne. As to any Additional Phases subsequently annexed and made subject to this Declaration, Developer means the owner of the leasehold estate in the Additional Phase under the Master Ground Lease immediately following annexation and may be Towne Development, Declarant Towne, or any other person or entity to whom Towne Development may transfer and assign said leasehold estate pursuant to Article 22 of the Master Ground Lease.

1.17 "Dominant Side-Lot Easement" means a three and one-half (3h) foot easement in favor of each Adjoining Lot and some of the End Lots (herein "the Dominant Tenement"), as more particularly shown on the Initial Plat and any Supplemental Plat, which extends into and runs along the entire side boundary of the next adjoining lot (herein "the Servient Tenement") and within which the Unit Lessee of the Dominant Tenement may build and maintain a fence enclosing a private yard which physically joins the dwelling structure of the Dominant Tenement to the dwelling structure of the Servient Tenement.

1.18 "Eligible Insurer or Guarantor" means any person or legal entity, including governmental and quasi-governmental agencies, which insure or guarantee a mortgage loan, or any portion thereof, creating a first lien against any Unit provided that such insurer or guarantor has given the Association written notice of its insurance or guarantee setting forth its name and address and



identifying the Unit, by number or address, subject to the first mortgage it is insuring or guaranteeing.

1.19 "Eligible Unit Mortgagee" means any holder of a mortgage or beneficiary under a deed of trust creating a first lien against any Unit provided that such mortgagee or beneficiary has given the Association written notice of its mortgage or deed of trust setting forth its name and address and identifying the Unit, by number or address, to which its first mortgage or deed of trust is subject.

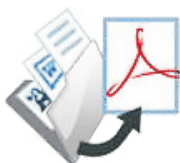
1.20 "End Lots" mean those platted lots in Phase I shown on the Initial Plat, and those platted lots shown on any Supplemental Plat filed in connection with the annexation of Additional Phases, having only one side boundary which abuts or adjoins another platted lot.

1.21 "Fiscal Year" means the fiscal year of the Association, which shall be the calendar year, except that the first fiscal year shall be less than one (1) year commencing upon conversion of Phase I and ending on December 31 of the year in which such conversion occurs. If separate Associations are formed by the Developer for Additional Phases, then the first fiscal year for such separate Associations shall commence upon conversion of that Phase and end on December 31 of the year that Phase is converted. Notwithstanding the foregoing, the Board shall have the power and authority to change the Association's fiscal year.

1.22 "Ground Rent Reserve" means the funds, together with interest thereon, to be contributed by the Developer to the Association upon each sale and conveyance by the Developer of a Unit to a Unit Lessee in the amount of \$155.00 for each such sold Unit, which such funds are to be held by the Association and used by the Association to pay delinquencies by Unit Lessees to Master Ground Lessor under the Unit Leases and for other purposes as more particularly set forth in Article XIII.

1.23 "Initial Plat" means that certain Plat of Towne Park Subdivision filed with respect to the real estate described on Exhibit I in the Office of the County Clerk of Bernalillo County, New Mexico, on August 29, 1983.

1.24 "Limited Common Areas" mean those portions of the Common Areas and Facilities, if any, which may be separately identified on any Supplemental Plats filed in





connection with the annexation of Additional Phases or which may be specifically reserved and identified in the Association's By-Laws or Rules, for the exclusive use and benefit of one or more, but less than all, Units or Unit Lessees.

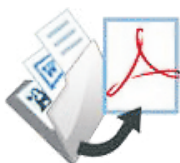
1.25 "Lot" means any separately platted and identified portion of the Property now or hereafter subject to this Declaration as shown on the Initial Plat as to Phase I or any Supplemental Plat filed in connection with the annexation of Additional Phases.

1.26 "Lot Building Area" means that portion of each Lot, including any Dominant Side Lot Easement appurtenant thereto, upon which a single family dwelling and all improvements physically attached thereto, including garages, carports and exterior fencing, is originally constructed by the Developer, or by any Unit Lessee who owns the leasehold estate in the Lot pursuant to plans and specifications approved by the Architectural Control Committee.

1.27 "Lot Restricted Area" means all portions of each Lot, including any Dominant Side-Lot Easement appurtenant thereto, except the Lot Building Area. The Lot Restricted Area of each Lot is the portion of each Lot which is to be landscaped and maintained by the Association and in which the Association has an easement to build walkways, pathways, exterior lighting, barbeque pits and other similar improvements for the common use any of all Unit Lessees. The Lot Restricted Area is also that portion of each Lot within which the Unit Lessee who owns the leasehold estate in such Lot may not build or construct any improvements without the prior approval of the Architectural Control Committee.

1.28 "Master Association" means a New Mexico non-profit corporation which may be formed by the separate Associations, if any, for Phase I and any Additional Phases and to which, if formed, the leasehold estate in the Common Areas and Facilities for all phases annexed hereto will be conveyed and transferred by the separate Associations.

1.29 "Master Ground Lease" means the unsubordinated ground leasehold estate in the real estate described on Exhibit I created pursuant to the "Towne Park Master Ground Lease" dated January 12, 1983, between Towne Development Company and The Regents of the University of New Mexico, as



to which that certain "Memorandum of Lease" dated August 19, 1983 was recorded on August 24, 1983 in Book Misc. 42A, page 63, Records of Bernalillo County, New Mexico.

1.30 "Master Ground Lessee" means the person or persons who now or hereafter own the leasehold estate in the real estate described on Exhibit 1 created pursuant to the Master Ground Lease. Initially, Declarant Towne is the Master Ground Lessee with respect to the Units in Phase I, the Association is, or will be, the Master Ground Lessee as to the Common Areas and Facilities in Phase I, and Towne Development, or its successors in interest and assigns, is the Master Ground Lessee with respect to the Annexable Property.

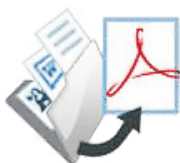
1.31 "Master Ground Lessor" means The Regents of the University of New Mexico, a body corporate of the State of New Mexico, and its successors in interest and assigns who own the reversionary fee interest in the real estate described on Exhibit I under the Master Ground Lease.

1.32 "Mortgage" means a mortgage, deed of trust or other security instrument creating a lien on real estate to secure the payment or performance of any obligation.

1.33 "Mortgagee" means the holder or beneficiary of a mortgage.

1.34 "Operating Expenses" mean all expenses incurred or paid by the Association in connection with the operation and management of the Association and the Common Areas and Facilities. Operating Expenses do not include any sums, which the Association pays into the Replacement Reserve or the Working Capital Reserve or any funds, which the Association pays from the Ground Rent Reserve to the Master Ground Lessor as required by Article XIII.

1.35 "Period of Developer Control" means any period of time during which the Developer owns the leasehold estate in twenty-six percent (26%) or more of the total Units in the Property subject to this Declaration, including any Additional Phases subsequently annexed; provided, however, that the Period of Developer Control shall cease and terminate regardless of the percentage of total Units owned by the Developer on the date which in seven (7) years after the date on which Developer sells and transfers the first Unit in Phase I to any third person.



1.36 "Phase I" means the real estate described on Exhibit II to this Declaration, which real estate is also shown and designated as Phase I on the Initial Plat.

1.37 "Property" or "the Property subject to this Declaration" means the leasehold estate created under the Master Ground Lease in Phase I and any Additional Phases subsequently annexed and made subject to this Declaration.

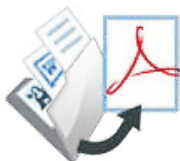
1.38 "Prorata Share of Common Expenses" means the fractional share of the Common Expenses which each Unit Lessee bears and is obligated to pay to the Association which Such fractional share shall be determined on a per capita basis by dividing the Common Expenses by the total number of Units then annexed to and made subject to this Declaration, including all Units then owned by the Developer. The Prorata Share of Common Expenses will be reduced upon each annexation of any Additional Phases.

1.39 "Replacement Reserve" means funds held by the Association for the periodic maintenance and replacement of the Common Facilities, together with interest thereon, in a segregated account, which said reserve is to be funded by the allocation of a portion of the Regular Monthly Assessment to be determined by the Board in its annual budget for each fiscal year.

1.40 "Regular Monthly Assessment" means the monthly payments required from each Unit Lessee to pay the Common Expenses in an amount to be determined by the Board in its annual budget for each fiscal year.

1.41 "Rules" mean the Rules and Regulations of the Association to be promulgated by the Board pursuant to the By-Laws and any amendments thereto.

1.42 "Side-Lot Easements" means, as to Adjoining Lots, the three and one-half (3h) foot easements, which run along both side boundaries of the Adjoining Lot(s), one of which is a Servient Side-Lot Easement in favor of the adjoining lot and one of which is a Dominant Side-Lot Easement in favor of the lot. As to End Lots, the term refers to and means one three and one-half (3h) foot easement running along one side boundary of the End Lot and extending into the next adjoining lot, which easement is either a Dominant Side-Lot Easement in favor of the End Lot or a Servient Side-Lot Easement to which the End Lot in subject. The Side-Lot Easements are easements appurtenant which run with



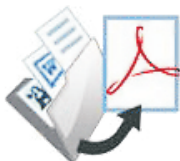
the Land for the use and benefit of the heirs, successors, grantees and assigns of the Unit Lessees in whose favor the easement is created until this Declaration expires and terminates upon the expiration of the Master Ground Lease on February 28, 2052. The Side-Lot Easements within Phase I are more particularly shown on the Initial Plat. Side-Lot Easements within Additional Phases will be shown on the Supplemental Plats filed in connection with the annexation of Additional Phases.

1.43 "Supplemental Declaration" means any written and recorded amendment or modification to this Declaration which the Developer, Declarant Towne, Master Ground Lessor and Unit Lessees are permitted to record pursuant to this Declaration, including any such amendment recorded by Developer, Declarant Towne and Master Ground Lessor incident to the annexation of Additional Phases as provided in Article X or the combination, partition or realignment of Lot boundaries by the Developer with respect to Lots in which the Developer still owns the leasehold estate under the Master Ground Lease as provided in Section 9.1(q) of Article IX.

1.44 "Supplemental Plats" mean such additional plats as the Developer and Master Ground Lessor may subsequently file in connection with the annexation of Additional Phases of the Annex-able Property or in connection with the combination, partition or realignment of Lots in which the Developer still owns the leasehold estate under the Master Ground Lease.

1.45 "Tenant" means any person who occupies a Unit, other than the Developer and the Unit Lessee who owns the lease-hold estate in such Unit, for a term of less than the remaining term of the Unit Lease for such Unit, including, without limitation, a sublessee of the Unit Lessee under a written sublease and any month-to-month tenant, tenant at will or tenant at sufferance of the Unit Lessee.

1.46 "Total Revenues" mean and include: (i) payments received by the Association from Unit Lessees for Regular Monthly Assessments, excluding any portion thereof allocated to the Replacement Reserve pursuant to the annual budget then in effect; (ii) any fees charged and received by the Association in connection with use of the Common Areas and Facilities; (iii) any interest or other income derived by the Association from the investment of Association funds, except for interest and income derived



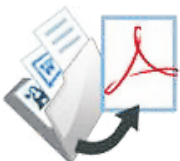
from the Replacement Reserve and Ground Rent Reserve (but including expressly interest and other income derived from the Working Capital Reserve); and (iv) all other receipts of the Association which constitute "income" in accordance with generally accepted accounting principles.

1.47 "Unit" means and includes: (i) the leasehold estate created under the Unit Lease in the Lot and all improvements now or hereafter constructed thereon; (ii) any Dominant Side-Lot Easement in favor of the Lot; (iii) as to Adjoining Lots and some of the End Lots, the Servient Side-Lot Easement to which such Adjoining or End Lot is subject; (iv) all rights and obligations set forth in and created by the Unit Lease for such Unit; and (v) all covenants, conditions, restrictions, easements, Ilene, servitudes and appurtenances set forth in and created by this Declaration, the By-Laws and the Rules.

1.48 "Unit Lease" means the written lease to be entered into, the form and content of which is attached as Exhibit "C" to the Master Ground Lease, between the Master Ground Lessor, as lessor, and each person to whom the Developer sells and transfers a Unit, as lessee. As more particularly set forth in the Master Ground Lease, the Developer may execute the Unit Lease on behalf of Master Ground Lessor.

1.49 "Unit Lessee" means the lessee under a Unit Lease and such Unit Lessee's heirs, personal representatives, successors in interest and assigns who, by assignment or operation of law, own the entire leasehold estate created by the Unit Lease for the remaining term thereof. The term "Unit Lessee" also includes any person to whom the beneficial ownership in the entire remaining term of the Unit Lease has been sold or transferred, whether or not legal title to the leasehold estate has been assigned, including purchasers under an executory land or real estate contract and lessees under a lease with an option to purchase the Unit. The term "Unit Lessee" does not include any mortgagee having a lien against the Unit unless and until such mortgagee succeeds to the leasehold interest of the Unit Lessee pursuant to foreclosure or a conveyance in lieu of foreclosure.

1.50 "Working Capital Reserve" means funds held by the Association, together with interest thereon, which said reserve is to be funded by the payments to be made by each Unit Lessee, except the Developer, upon entering into the



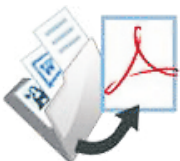
Unit Lease in an amount equal to twice the then Regular Monthly Assessment.

## ARTICLE II

### DURATION

Section 2.1 Expiration: On February 28, 2052, the date on which the Master Ground Lease expires (herein "the expiration date"), this Declaration, and all covenants, easements, restrictions, appurtenances, liens, encumbrances, servitudes and all other rights and obligations affecting the Property created hereby, shall automatically cease, terminate and become null and void.

Section 2.2 Early Termination, Surrender or Abandonment of Master Ground Lease: Abandonment of Master Ground Lease: Upon conversion of Phase I, or upon the conversion of any Additional Phases subsequently annexed, any termination, surrender or abandonment of the Master Ground Lease prior to the expiration date shall not be effective with respect to any Units owned by Unit Lessees or the Common Areas and Facilities located within any such converted phase and the Master Ground Lease shall continue in full force and effect, except to the extent replaced and superseded by the Unit Leases, with respect to such converted phases. It is the express purpose and intent of Developer and Master Ground Lessor that any termination, surrender or abandonment of the Master Ground Lease prior to the expiration date shall not affect the rights and obligations of any Unit Lessee who enters into a Unit Lease with Master Ground Lessor, including, without limitation, the right of any such Unit Lessee to use and enjoy the Common Areas and Facilities within the converted phase and to have any further development, if any, within the converted phase completed in accordance with a general plan of development consistent with the Initial Plat and any Supplemental Plats filed with respect to the converted phases: Termination, surrender or abandonment of the Master Ground Lease prior to the expiration date shall, however, result in the termination or forfeiture of the leasehold estate of the Master Ground Lessee (except for Common Areas and Facilities transferred to and held by the Association in converted phases) and, thereupon, Master Ground Lessor shall succeed to the interest of the Master Ground Lessee (except the Association as aforesaid) in all portions of



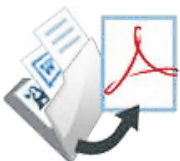
the Annexable Property not then converted and in the Units then owned by the Master Ground Lessee in the converted phases and, with respect to Units owned by the Master Ground Lessee in converted phases, Master Ground Lessor shall become the Developer under this Declaration.

### ARTICLE III

#### EASEMENTS

Section 3.1 Common Areas and Facilities: Each Unit Lessee shall have a non-exclusive easement in and the right to enjoy and use all Common Areas and Facilities within the Property subject to this Declaration in common with all other Unit Lessees and the Association, including specifically, without limitation, the right of vehicular and pedestrian ingress and egress through and over the Common Areas to and from their respective Units. The easement rights hereby granted are, however, subject to certain restrictions contained in this Declaration and the provisions, now or hereafter contained in the By-Laws and Rules relating to the Common Areas and Facilities, including without limitation, the following:

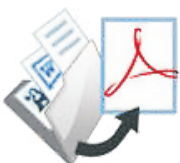
- (a) The rights and easements created in favor of the Developer pursuant to Article IX during the period of original construction of the improvements on the Lots and the sale and transfer of all Units owned by Developer.
- b. The right of the Board to promulgate Rules regulating and restricting the number of guests and otherwise regulate the use of recreational facilities, the right of the Board to impose reasonable fees and charges for the use of certain Common Facilities, and the right of the Board to assign, rent or otherwise designate and control the use of parking and storage areas within the Common Areas.
- c. Pursuant to the procedures more particularly set forth in the By-Laws (which procedures afford the Unit Lessee prior notice, an opportunity for a hearing before the Board and the right to be represented by legal counsel at Unit Lessee's expense), the right of the Board to levy fines and/or suspend any Unit Lessee's right to use the Common Areas and Facilities for non-payment of assessments and other sums due the Association or for infractions of the provisions of the Declaration, By-Laws and Rules.



- d. The right of the Board to pledge, mortgage and encumber the Common Areas and Facilities to secure payment of Association indebtedness.
- e. The right of the Board to regulate all vehicular traffic within the Common Areas, including types of vehicles, speed, noise and other characteristics, and the right of the Board to delegate such vehicular traffic regulation to a municipality or other governmental agency or to employ a private security patrol company for such purposes.
- f. The right of the Association to dedicate and transfer the private streets now or hereafter located within the Common Areas to a municipality or other governmental agency, which agrees to assume the responsibility for maintenance, repair, replacement and traffic control with respect thereto.

Section 3.2 Utility Easements and Rights-of-Way: In addition to all utility easements, private streets, drainage easements and parking areas shown on the Initial Plat, or which may be shown on a Supplemental Plat filed in connection with the annexation of Additional Phases, the Developer and the Association shall have the right and power, and are hereby granted a power of attorney by each Unit Lessee, to dedicate and create rights-of-way, streets and easements within the Common Areas and to grant and convey to third parties easements for the installation, maintenance and repair of utilities of every nature in, on, over, under and across the Common Areas and any Lot. As used in this provision "utilities" mean and include, without limitation, any services which the Association or the Developer elect to make available to the Common Areas and Facilities or the Units on either a mandatory or voluntary basis, including electricity, gas, telephone, other communications systems, cable TV, security alarm systems, water and sewage. Each Unit Lessee by entering into and acceptance of his Unit Lease, or any assignment thereof, thereby consents to all provisions of this Section and shall be deemed to have granted the power of attorney herein provided.

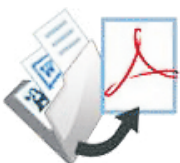
Section 3.3 DOT Restricted Area Easements: The Association and the Developer shall have an easement in, on, over, under and across the Lot Restricted Areas of each Lot to plant, water, mow, prune and otherwise landscape





such areas and to build, install, maintain and repair within such areas improvements for the common use and benefit of all Unit Lessees, including by way of illustration pathways, exterior lighting, barbeque pits, picnic tables and other similar Common Facilities. To the extent, if any, that the Association or the Developer elects to build such Common Facilities on the Lot Restricted Areas, then all Unit Lessees shall have the same non-exclusive rights to a common easement of use and enjoyment in such Common Facilities as they have with respect to the Common Areas and Facilities. Provided, however, that if the Architectural Control Committee, either before or after the construction of any common facilities within the Lot Restricted Area of any Lot, grants its approval to the Unit Lessee of such Lot to extend its dwelling or construct other improvements within the Lot Restricted Area of that Lot, then to the extent that any such additional improvements are actually constructed the portion of the Lot Restricted Area on which such additional improvements are located shall, thereupon and thereafter, become a part of the Lot Building Area of that Lot and neither the Association, the Developer nor any Unit Lessee shall thereafter have any easement rights in such expanded Lot Building Area under this provision.

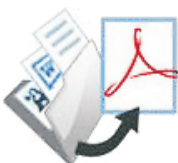
Section 3.4 Side-Lot Easements: As more particularly shown on the Initial Plat and any Supplemental Plat filed in connection with the annexation of Additional Phases and as will be more particularly set forth in the "Unit Deed and Assignment of Leasehold Estate" which Developer will execute and record in favor of the first purchaser of each Unit, each Unit Lessee of an Adjoining Lot and each Unit Lessee of some of the End Lots (herein "the Dominant Tenements") are granted a three and one-half (310 foot Dominant Side-Lot Easement running along and within the side boundary of the next adjoining lot (herein "the Servient Tenement") to build, install, maintain and repair (but only within the Lot Building Area of the Dominant Side-Lot Easement) a fence or wall physically connecting the dwelling of the Dominant Tenement with the dwelling of the Servient Tenement and to use and maintain the enclosed portion of the Dominant Side-Lot Easement as a private yard area. The Dominant Side-Lot Easements hereby granted are subject, however, to the right of the Unit Lessee of the Servient Tenement to enter upon such easement for the purpose of repair and maintenance of the exterior walls, roofs, eaves, overhangs, drainage pipes and gutter and such



other improvements an may be constructed on the Servient Tenement so as to abut the Dominant Side-Lot Easement. Each Adjoining Lot and some of the End Lots, an more particularly shown on the Initial Plat and any Supplemental Plat filed in connection with the annexation of Additional Phases and an will be more particularly set forth in the "Unit Deed and Assignment of Leasehold Estate" which Developer will execute and record in favor of the first purchaser of each Unit, is subject to a Servient Side-Lot Easement of three and one-half (3h) feet running along one side boundary, which easement constitutes the Dominant Side-Lot Easement of the next adjoining lot as herein described. To the extent of any deviation between the Initial or any Supplemental Plat and the actual original construction of the connecting fence or wall, the actual location of the fence or wall and the real estate enclosed thereby shall constitute the Dominant Side-Lot Easement of each Adjoining Lot and certain End Lots and the Servient Side-Lot Easement to which each Adjoining Lot and certain End Lots is subject.

Section 3.5 Encroachment Easements: In the event any of the Common Facilities shall be constructed so as to encroach upon any Lot, or in the event that the improvements constructed by the Developer as part of the original construction on any Lot shall encroach upon the Common Areas or any adjoining lot, or in the event that an encroachment shall result from any settling, rising or lateral movement of improvements or reconstruction of any improvements following damage or destruction, then in any such events the Association, Developer or Unit Lessee whose improvements so encroach shall be and hereby is granted, provided that such encroachment was inadvertent and not willful, an easement to the extent of such encroachments to use, maintain and repair the improvements which encroach.

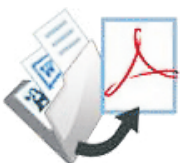
Section 3.6 Construction Easements: The Developer and its agents, representatives, contractors, subcontractors and materialmen are hereby granted an easement in, on, over, under and across all Property subject to this Declaration to the extent necessary to complete all construction of the original improvements on the Lots and the sale of all Units by the Developer. Provided, however, that Developer shall not unreasonably interfere with the use and enjoyment by any Unit Lessee of his Unit unless authorized by such Unit Lessee, which such authorization shall not be unreasonably withheld.



Section 3.7 Repair Easements: Each Unit Lessee is hereby granted an easement to enter upon any adjoining lot or the Common Areas to the extent necessary to maintain and repair the exterior of any improvements located within such Unit Lessee's Lot or to maintain and repair any utility lines, pipes, cables or other conduits which provide utility services of any nature to such Unit Lessee's Unit, The Association is hereby granted an easement to enter upon any Lot as may be necessary to build, install, maintain and repair the Common Facilities or any utility lines, pipes, cables or conduits which provide utility services of any nature to the Common Areas and Facilities or to several of the Units on a mandatory or voluntary basis through master meters or otherwise. The Association is further granted an easement to enter upon any Lot to maintain and repair the exterior of any improvements constructed thereon upon the failure or refusal of the Unit Lessee to do so as required by Section 8.2 of Article VIII. In the event of emergencies involving immediate damage to property or safety, the Unit Lessee or Association, as applicable, shall have the right of entry to effect such repairs without prior notice to the person who owns the leasehold estate in the property subject to this easement. If no emergency is involved, then the Association or Unit Lessee, as applicable, shall give prior notice to all affected persons and shall enter pursuant to this repair easement only at times and in such manner as shall be reasonably convenient to all affected persons.

Section 3.8 Easements Run With Land: All easements and rights-of-way granted and described in this Article III, and all easements and rights-of-way shown on the Initial Plat and any Supplemental Plat, run with the Land and are binding upon and inure to the benefit of the Association, the Developer and all Unit Lessees and their respective heirs, personal representatives, tenants, successors in interest and assigns.

Section 3.9 Duration of Easements: Except for easements granted to Developer, all easements and rights-of-way granted and described in this Article III, any and all easements and rights-of-way shown on the Initial Plat or any Supplemental Plat, shall continue in full force and effect until the expiration date of the Master Ground Lease at which time all said easements and rights-of-way shall automatically cease, terminate and become null and void. With respect to easements granted to the Developer pursuant



to this Article III and Article IX of this Declaration, such easement rights shall automatically cease, terminate and become null and void at such time as the Developer sells and transfers all Units subject to this Declaration, including Units in any Additional Phases subsequently annexed pursuant to Article X.

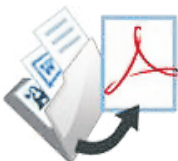
#### ARTICLE IV

##### NATURE OF UNIT LESSEES' RIGHTS OF OWNERSHIP

Section 4.1 Nature of Ownership Rights: Each Unit Lessee has the exclusive right to use, occupy and enjoy his Unit for residential purposes (subject to the Lot Restricted Areas Easements granted pursuant to Section 3.3 of Article III) and the right to use and enjoy, in common with all Unit Lessees, the Common Areas and Facilities and the Lot Restricted Areas subject to the provisions of this Declaration, the By-Laws and the Rules. In addition to the exclusive right to use and enjoy his Unit, each Unit Lessee of Adjoining Lots and End Lots have the exclusive right to use and enjoy the Lot Building Area of the Dominant Side-Lot Easement appurtenant to the lot and each Unit Lessee of an Adjoining Lot is subject to a Servient Side-Lot Easement. Whenever the term "Unit Lessee" is used in connection with any license, easement, right of possession or use, that term includes all members of the Unit Lessee's immediate family and the Unit Lessee's guests, invitees, agents, servants and employees subject, however, to such By-laws and Rules as may be promulgated with respect to the Common Areas and Facilities. All rights of ownership of all Unit Lessees are further subject to his Unit Lease with the Master Ground Lessor and terminate upon the expiration date of the Master Ground Lease.

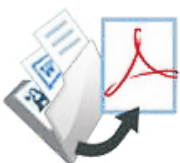
Section 4.2 Delegation of Unit Lessee's Rights and Obligations: Any Unit Lessee may delegate his rights and obligations under this Declaration, the By-Laws, Rules and the Unit Lease (except its right to membership in the Association and voting rights) to its Tenants, sublessees or any other person it permits to occupy or use the Unit for less than the remaining term of the Unit Lease (herein "the Tenant") subject however to the following conditions:

- a. There must be a written sublease or rental agreement between the Unit Lessee and the Tenant (herein "the Tenant Agreement") for a minimum initial term of at



least six (6) months; provided, however, that the Board may, by resolution, lower the minimum initial term requirement to not less than one (1) month.

- b. All adult members of Tenant's immediate family who will occupy the Unit must sign the Tenant Agreement.
- c. Notwithstanding any such delegation and regardless of whether the Tenant Agreement imposes upon the Tenant the obligation to pay Unit Lessee's monetary obligations to the Association and the Master Ground Lessor under this Declaration and the Unit Lease, the Unit Lessee shall remain personally liable with respect to all such monetary obligations and with respect to any damages caused to the Association or the Master Ground Lessor by the Tenant's breach of any provisions of this Declaration, the By-Laws, Rules or Unit Lease.
- d. The Tenant Agreement must require that the Tenant and all persons required to sign the Tenant Agreement will comply with all provisions of this Declaration, the By-Laws, Rules and Unit Lease.
- e. The Tenant Agreement must grant the Association power-of-attorney from the Unit Lessee pursuant to which the Association shall have the right, on behalf of the Unit Lessee, to evict the Tenant or any other persons who occupy the Unit in accordance with applicable law for any breach of the provisions of this Declaration, the By-Laws, Rules or the Unit Lease, including without limitation, any failure or refusal of either the Unit Lessee or the Tenant to pay any monetary obligations due the Association or the Master Ground Lessor. Such provisions are required since the Unit Lenin, provides that any violation of the provisions of this Declaration, the By-Laws or the Rules also constitute a breach or default under the Unit Lease.
- f. In the event that the Association finds it necessary to commence eviction proceedings against the Tenant or other occupants of the Unit, the Unit Lessee covenants and agrees to reimburse the Association for all attorneys' fees, court costs and other expenses reasonably incurred by the Association in connection with such eviction proceedings, together with interest thereon at the Default Interest Rate.



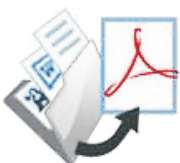
g. The Tenant Agreement must be submitted to and approved as to form and substance by the Association prior to occupancy of the Unit by the Tenant. The Association shall not unreasonably withhold its approval provided that the foregoing requirements are met. Any Tenant Agreement not approved by the Association shall be null and void and each Unit Lessee, by execution and acceptance of his Unit Lease, shall be deemed to have granted the Association a power-of-attorney coupled with an interest to immediately commence eviction proceedings in accordance with applicable law and subparagraph (f) above against any Tenant or other persons who occupy the Unit under a Tenant Agreement not approved by the Association or in the absence of a written Tenant Agreement.

## ARTICLE V

### MEMBERSHIP AND VOTING RIGHTS

Section 5.1 Membership: Each Unit Lessee, and the Developer, shall automatically be a member of the Association. Membership in the Association is appurtenant to and follows ownership of the leasehold estate in each Unit created pursuant to the Unit Lease. Ownership of the leasehold estate in the Unit created pursuant to the Unit Lease is the sole qualification for membership in the Association. Upon any sale or transfer of legal title to or the beneficial ownership of the entire remaining term of the leasehold estate created under any Unit Lease, howsoever caused or brought about, the transferor shall automatically cease to be a member of the Association and the transferee shall automatically be and become a member of the Association.

Section 5.2 Unit Lessee Voting Rights: Each Unit Lessee shall be entitled to one (1) vote in the affairs and management of the Association for each Unit owned. If any Unit is owned by more than one person, the persons owning fractional interests in such Unit aggregating more than fifty percent (50%) of the total ownership thereof shall file a written designation specifying which one of them is authorized to cast the vote for that Unit. In the absence of the filing of such a written designation and upon the failure of all persons owning an interest in the Unit to agree as to how so cast the vote for that Unit, no owner of



a fractional interest in any Unit shall be permitted to cast the vote for such Unit.

Section 5.3 Developer Voting Rights: During any Period of Developer Control (as defined in Section 1.35 of Article I) and prior to the date which is seven (7) years after the date on which the Developer first sells and transfers any Unit in Phase I, the Developer shall retain control of and shall have votes in the management and affairs of the Association equal to the sum of the number of votes held by all Unit Lessees plus one (1). The Developer may lose voting control, but subsequently regain voting control by reason of the annexation of Additional Phases pursuant to Article X.

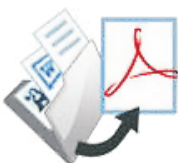
Section 5.4 Suspension of Membership and Voting Rights: Pursuant to the procedures more particularly set forth in the By-Laws (which procedures afford the Unit Lessee prior notice, an opportunity for a hearing before the Board and the right to be represented by legal counsel at Unit Lessee's expense), the Board may suspend the membership and voting rights of any Unit Lessee for non-payment of Regular Monthly Assessments, Special Assessments, Individual Assessments and payments required to maintain the Ground Rent Reserve and for other violations of this Declaration, the By-Laws and the Rules. Provided, however, that the Association may not suspend the right of pedestrian and vehicular ingress and egress over, through or across the private streets and pathways of the Common Areas and Lot Restricted Areas as may be reasonably necessary to permit access to any Unit by the Unit Lessee of such Unit, the members of such Unit Lessee's immediate family who reside in the Unit, or such Unit Lessee's tenants, guests or invitees.

Section 5.5 Notice, Meeting and Voting Rules: The requirements as to notice and meetings of the Association and the Board and as to voting rules and procedures are set forth in the By-Laws.

## ARTICLE VI

### UNIT LESSEES' RIGHTS TO TRANSFER AND MORTGAGE UNITS

Section 6.1 Rights to Transfer Unit: Each Unit Lessee shall have the right to freely assign and transfer the entire leasehold estate in his Unit for the remaining term



of the Unit Lease subject only to the provisions of Article 22 of the Unit Lease which require that an executed copy of such assignment or instrument of transfer be deposited with the Master Ground Lessor, that the assignee or transferee assume all obligations of the Unit Lessee under the Unit Lease in writing and that the transferring or assigning Unit Lessee shall be released from personal liability under the Unit Lease provided that all rent thereunder is current and the Master Ground Lessor consents, which consent may not be unreasonably withheld by the Master Ground Lessor. Each Unit Lessee may freely sublet or lease his Unit to a Tenant for less than the remaining term of the Unit Lease subject only to the requirements of Section 4.2 of article IV of this Declaration and Article 22 of the Unit Lease.

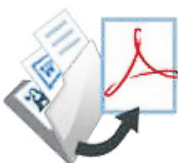
Section 6.2 Rights to Mortgage Unit: Each Unit Lessee may freely mortgage, pledge or otherwise create a lien against his Unit provided that: (i) the lien of any such mortgage shall be subordinate and inferior to the reversionary fee interest of the Master Ground Lessor under the Master Ground Lease; and (ii) any indebtedness secured by the mortgage must be payable in full in accordance with its terms prior to the expiration date of the Master Ground Lease. Each Unit Lessee who mortgages his Unit is required to file a true and correct copy of any executed mortgage creating a lien against his Unit with the Association and the Master Ground Lessor, but the failure to do so shall not affect the validity or enforceability of such mortgage.

## ARTICLE VII

### PERMITTED AND PROHIBITED USES

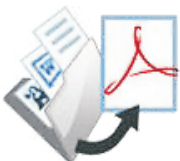
Section 7.1 Permitted Unit Uses: Each Unit Lessee shall use and occupy his Unit solely as a single family residence, except that: (i) professional and administrative occupations may be conducted within the Unit so long as no sign or other external evidence exists with respect thereto; and (ii) Unit Lessees may rent and sublease their Units to Tenants subject to the requirements of Section 4.2 of Article IV of this Declaration and Article 22 of the Unit Lease.

Section 7.2 Prohibited Uses: The following uses and activities are prohibited within or upon any Unit or any of the Property subject to this Declaration:



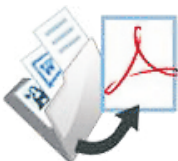


- a. Business and Commercial Uses: No business or commercial activities shall be allowed except for: (i) the activities of the Association or its professional management company in connection with the management and operation of the Association and the Common Areas and Facilities; (ii) the construction and sale activities of the Developer as permitted in Article IX of this Declaration; and (iii) the activities of Robert E. Towne, or any legal entity the majority ownership of which is owned by Robert E. Towne, in offering, installing, maintaining and providing cable TV, security alarm and/or other communication systems to the Association or the Units.
- b. Oil Drilling: No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon any Unit or the Common Areas, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Unit or the Common Areas or within five hundred (500) feet below the surface of any Unit or the Common Areas. No derrick or other structure designed for use in boring for oil or natural gas or water (except as may be determined by the Board to be desirable for the benefit of the planned residential community) shall be erected, maintained or permitted upon any Unit or the Common Areas.
- c. Offensive Conduct; Nuisances: No noxious or offensive activities, including but not limited to, repair of vehicles, shall be carried on upon, or within, the Property. Nothing shall be done on or within the Property that is or may become an annoyance or nuisance to the occupants of Units, or that in any way interferes with their quiet enjoyment of Units. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of Units and its contents, shall be affixed or used and even these shall be subject to reasonable regulation by the Board. No loud noises shall be permitted on the Property, and the Board shall have the right to determine if any noise or activity producing noise constitutes a nuisance. No Unit Lessee or occupant shall permit or cause anything to be done or kept upon the Property which will increase the rate of insurance thereon or which will obstruct or



interfere with the rights of other Unit Lessees or occupants. No Unit Lessee or occupant shall commit or permit any nuisance within his Unit or on the Property, or commit or cause any immoral or illegal act to be committed thereon. Each Unit Lessee and occupant shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities having jurisdiction over the Property with respect to the occupancy and use of his Unit. Unless otherwise permitted by the Board, no Unit Lessee, occupant or invitee shall serve food or beverages, cook, barbecue, or engage in similar activities, except within the Unit, or except in Common Areas and Facilities designated for that purpose and subject to the Rules.

- d. **Parking Restrictions; Use of Garages and Parking Spaces.** Unless otherwise permitted by the Rules or the express permission of the Board, no automobile, boat, trailer, recreational vehicle, camper, truck, commercial vehicle or other vehicle shall be parked or left on any street within the Property or anywhere upon the Property other than on or within a garage or carport attached to a Unit or within an assigned parking stall or space, if any. Parking by commercial vehicles for the purpose of making deliveries and or moving, and the use of all guest parking spaces shall be permitted only in accordance with the Rules. Subject to the Rules, garages and carports, if any, shall be used for the parking of vehicles only and garage doors shall remain closed at all times except when entering or exiting.
- e. **Signs.** Except for project name signs and Developer's sales signs, no signs, posters, displays or other advertising device of any character shall be erected or maintained on, or shown or displayed on, any part of the Property or the Units except as provided in the Rules or pursuant to the prior written approval by the Board. Address identification signs and mailboxes may be maintained subject to the approval of the Architectural Control Committee. The Board may summarily cause all unauthorized signs to be removed and destroyed. This provision shall not apply to notices of non-responsibility for mechanics' and materialmen's liens posted by or on behalf of the Master Ground Lessor or to any signs used by the

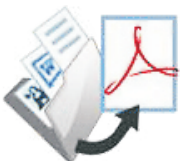


Developer or its agents, in connection with the original construction and sale of Units.

Notwithstanding the foregoing, one sign of customary and reasonable dimensions advertising a Unit for sale or for rent may be placed within each Lot by the Unit Lessee of, the location and design thereof to be subject to approval by the Board.

(f) Antennae, External Fixtures, Etc. No television or radio poles, antennae, flag poles, air conditioning units, electronic wiring, insulation, machinery, clothes lines or other external fixtures shall be constructed, erected or maintained on or within the Property except for: (i) such items as may be installed in connection with the original construction of improvements on the Lots; (ii) such items as the Board may expressly approve; or (iii) cable TV, security alarm or other communications systems and equipment installed, maintained and serviced by Robert E. Towne or any legal entity controlled by Robert E. Towne or the majority ownership of which is owned by Robert E. Towne. Each Unit Lessee shall, however, have the right to maintain television or radio antennae within completely enclosed portions of the dwelling or garage located on the Lot Building Area of his Unit.

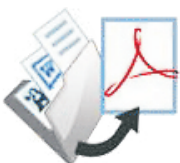
- g. Fences, Etc. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere upon any Unit or the Common Areas except such as are installed in accordance with the original construction of improvements on the Lots and the Common Areas, and any replacement thereof, or as may be authorized and approved by the Board.
- h. Animals: No animals, reptiles, rodents, birds, fish, livestock or poultry of any kind shall be raised, kept or bred in any Unit or within the Property, except as follows; (i) Each Unit Lessee or occupant may keep not to exceed two (2) dogs, two (2) cats or one (1) dog and one (1) cat, provided that they are not kept, raised or bred for commercial purposes; (ii) Fish may be kept in an enclosed aquarium; and (iii) up to two (2) birds may be kept provided they are caged. No dog shall be allowed outside the Unit, or any fenced portion thereof, unless on a leash and accompanied by a person. The Board shall have the right, in its



exclusive discretion, to determine that any particular animal permitted on the Property under this provision constitutes a nuisance and, if the Board so determines, the Board shall have the right to require any such animal to be removed from the Property. Any person who brings or keeps animals on the Property, whether or not permitted by this provision, shall be liable to all other Unit Lessees, occupants, guests and invitees for any personal injury on property damage caused by such animal while it is on the Property.

- i. Recreational Vehicles: Except as may be expressly authorized in writing by the Board or in the Rules, no boat, trailer, truck of one (1) ton capacity or more, camper, recreational vehicle, tent or other temporary structure shall be parked or left anywhere within the Common Areas or within public view upon any Lot and no such vehicles or temporary structures and tents may be used as a living area. Provided, however, that this restriction shall not be applicable to the Developer, its contractors, agents or designees, with respect to temporary structures or trailers used by the Developer incident to construction of the original improvements on the Lots and/or the sale of the Units.
- j. Trash Disposal: Trash, garbage and other waste shall be kept only in sanitary containers No Unit Lessee or occupant shall permit or cause any trash or refuse to be kept on any portion of a Lot or the Common Areas other than in receptacles customarily used therefore which, except on the scheduled day for trash pickup, shall be located only in a garage, patio, or other location approved by the Board.
- k. Outside Drying and Laundering: If visible from the streets or any rear pathways, there shall be no exterior drying or laundering of clothes on patios, porches or other areas, and no exterior clothesline shall be erected or maintained.

(1) Common Area and Lot Restricted Area Trees. No Unit Lessee or occupant shall cut, trim, prune, remove, replace or otherwise alter or affect the appearance or location of any living tree, shrub or item of landscaping located in any portion of the Common Areas or the Lot Restricted Areas without the prior written



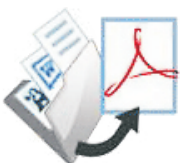
consent of the Board. Should any Unit Lessee fail to comply with this restriction, the Board may levy against such person an Individual Assessment for the cost of restoring or replacing such tree, shrub or item.

(m) Exterior Alterations. No Unit Lessee or occupant shall, at his expense or otherwise, make any color, change, alterations or modifications to the exterior of the buildings, fences, railings or walls situated upon his Lot without the prior written approval of the Architectural Control Committee as required by this Declaration.

n. Compliance with Laws, Etc. Nothing shall be done or kept within or upon any Unit or the Property which might increase the rate of, or cause the cancellation of, insurance maintained by the Association or any Unit Lessee's individually owned insurance policy or which would constitute a hazard to others. No Unit Lessee or occupant shall permit anything to be done or kept within or upon his Unit which is immoral or in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal governmental agency having jurisdiction over the Property. No Unit Lessee or occupant shall allow furniture, furnishings, or other personal property belonging to such person to remain within any portion of the Common Areas or Lot Restricted Areas except as may be permitted by the Board.

o. View Obstructions: No vegetation or other obstruction shall be planted or maintained in or upon any Unit in such location or of such a height as to unreasonably obstruct a view from any other Unit or the vicinity thereof. In the event of a dispute between Unit Lessees as to the obstruction of a view from a Unit, such dispute shall be submitted to the Board whose decision in such matter shall be binding. Any such obstruction shall, upon request of the Board, be removed or otherwise altered to the satisfaction of the Board by the Unit Lessee of the Unit upon which said obstruction is located.

(p) Storage: There shall be no exposed storage deposited, accumulated or preserved anywhere on the Property subject to this Declaration.

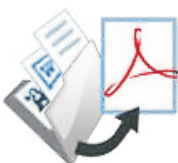


(q) Subdivision: No Unit Lessee may divide or subdivide the Lot, which is a part of his Unit, except that the Developer has certain rights to subdivide, combine and realign Lots as more particular equipment in Section 9.1(g) of Article IX.

- r. Unit Windows: The exterior windows of any Unit may only be covered with drapes, shades or blinds and may not be covered with foil, cardboard or similar materials.
- s. Radio and Other Electric Equipment and Devices: No Unit Lessee, Tenant or other occupant of a Unit may use or install ham radio equipment, high frequency radio equipment, electronic equipment or devices, or any other equipment or devices of any kind or description which may or does interfere with, or disrupt cable TV or other communications systems installed upon the Property for use by Unit Lessees.

Section 7.3 Liability and Indemnification: Any Unit Lessee, Tenant or other occupant who willfully or negligently violates any of the use restrictions contained in this Article VII shall be subject to fines and suspension of membership and other rights as more particularly set forth in the By-laws and shall further be liable to the Association and any other Unit Lessee, Tenant, or occupant who suffers damage by reason of such violation, together with attorney fees, court costs and other expenses incurred in connection with any legal proceedings commenced by the person damaged to recover monetary damages or to obtain injunctive relief.

Section 7.4 Enforcement of Restrictions: The Association, the Developer or any Unit Lessee shall be entitled to judicial enforcement of the use restrictions contained in this Article VII by filing a lawsuit seeking monetary damages, equitable relief (including injunctive relief), or both. All remedies and rights set forth in this Declaration, the By-Laws and the Rules are independent, concurrent and cumulative. The failure of any person to enforce any right upon any breach of the use restrictions contained in this Article VII, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same or any other breach. Any person entitled to file a lawsuit or other legal proceeding shall be entitled to recover reasonable attorneys' fees, court



costs and other expenses incurred in connection with any such legal proceedings if the person filing same prevails.

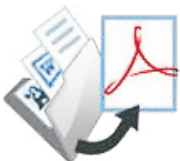
Section 7.5 Additional Provisions: The Board, by provisions in the By-Laws or the Rules, may promulgate additional rules and regulations for the use of the Common Areas and Facilities and the Units as, in the judgment of the Board, are necessary or desirable for the operation of the Property provided that such By-Laws and Rules are not in conflict with the provisions of this Declaration.

## ARTICLE VIII

### MAINTENANCE

Section 8.1 Association Responsibilities: The Association shall landscape the Common Areas and Lot Restricted Areas with appropriate trees, shrubs, grass, vegetation and other items and shall mow, water, fertilize, prune and otherwise maintain such landscaping in healthy, clean and sanitary condition. The Association shall repair, maintain, replace and restore all Common Facilities and other improvements now or hereafter constructed within the Common Areas and Lot Restricted Areas in good order and condition, except for reasonable wear and tear. All costs of maintenance pursuant to this provision shall constitute a Common Expense.

Section 8.2 Lessee Responsibilities: Each Unit Lessee shall repair, maintain, replace and restore the exterior of all improvements constructed on the Lot Building Areas of his Lot and within the Lot Building Area of the Dominant Side-Lot Easement appurtenant to his Lot, including all exterior wall surfaces, windows, fencing, roofs, eaves, awnings, overhangs and drainage pipes and gutters (herein "the Exterior Unit Maintenance") in good order and repair and in sanitary and clean condition. If any Unit Lessee fails to perform the Exterior Unit Maintenance, then the Association may, but is not obligated to perform such exterior Unit Maintenance and may levy an Individual Assessment against the Unit Lessee for the cost thereof. Each Unit Lessee shall be responsible for the maintenance, repair, restoration, and replacement of the interior of his dwelling and all other improvements located within the Lot Building Area of his Lot, including all fixtures, furniture, and equipment therein (herein "Interior Unit Maintenance") reserving to each Unit Lessee, however, complete discretion as to decoration, furnishings, and



choice of color, wall coverings, paint, carpet and other floor coverings with respect to such Interior Unit Maintenance.

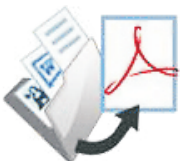
Section 8.3 Restrictions on Exterior Unit Maintenance: Unless the Architectural Control Committee grants its approval pursuant to this Declaration, each Unit Lessee shall perform the required Exterior Unit Maintenance in such a manner to insure that the color, composition of materials or other characteristics of the exterior of all improvements on his Unit are substantially identical with that which existed in connection with the original construction of such improvements. No Unit Lessee shall, except with the approval of the Architectural Control Committee, make any repair or alteration, which results in any protrusion into or onto any adjoining lot, the Common Areas or the Lot Restricted Areas.

## ARTICLE IX

### DEVELOPER RIGHTS

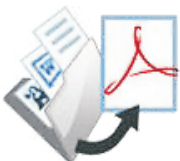
Section 9.1 Until all original construction of improvements on the Lots is completed by Developer, or its successors and assigns, and Developer sells and transfers all Units owned by it within the Property, Developer shall have the following Development Rights:

- (a) The right to maintain within the Common Areas or any Lot owned by Developer a construction office, temporary structure or trailers incident to construction, a sales office, management office, model units and such other facilities as Developer determines to be necessary or desirable in connection with construction, sale or rental of the Units.
- b. The right to store and secure construction materials upon or within the Common Areas or any Lot owned by Developer.
- c. The right to place signs advertising the Units for sale or rent upon or within the Common Areas or any Lot owned by Developer.
- d. An easement on, in, under, over or across the Common Areas and any Lot for ingress and egress and for the purpose of construction of improvements, renovation, repair, rehabilitation or other activities related





- thereto (including, without limitation, overhead or underground utility pipes, wires and other conduits to provide utility service to all Units in connection with the initial development of the raw land into fully developed lots ready for construction of dwellings thereon.) Provided, however, that Developer shall not unreasonably interfere with the use and enjoyment by any Unit Lessee of his Lot or Unit.
- e. Developer may delegate any of the rights specified in subparagraphs (a) through (d) of this Section 9.1 to its agents, servants, employees, contractors, subcontractors and materialmen.
  - f. Developer intends to construct single-family residences and other improvements upon the Lot Building Areas of each Lot. Developer has the right to design and construct such improvements on the Lots as Developer deems appropriate without the approval of the Architectural Control Committee. Should Developer elect to sell and transfer any Unit or Units whose Lots are not improved with a dwelling to third parties (other than legal entities controlled by Developer or in which Developer owns the majority ownership interest) with the intent and purpose that such Unit Lessees will build their own dwellings and improvements, then any such Unit Lessees shall be required, prior to commencement of any such construction, to submit final plans and specifications to, and obtain the approval thereof by, the Architectural Control Committee.
  - g. Prior to the conversion of Phase 1, or the conversion of any Additional Phase subsequently annexed to this Declaration, Developer shall have the right to file a Supplemental Plat which changes or realigns the platted late and Common Areas therein. After conversion of any phase, the Developer may not, without the consent of all Unit Lessees within the converted phase, change or replat the converted phase in any manner, which decreases or materially and adversely affects the Common Areas, but Developer does retain the right to combine, subdivide or realign Lot boundaries of Lots still owned by Developer within any converted phases. Any replat or change to any phase annexed and made subject to this Declaration, whether or not converted, shall be effected and evidenced by



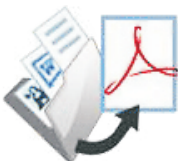
the filing of a Supplemental Plat and a Supplemental Declaration describing the change. If any such replat or change is made prior to conversion of the phase affected, the Supplemental Plat and Supplemental Declaration must be executed by the Developer and the Master Ground Lessor. If any such replat or change is made after conversion of the phase affected and if the change decreases or materially and adversely affects Common Areas, then the Supplemental Plat and Supplemental Declaration must be executed by the Developer, the Master Ground Lessor and all Unit Lessees in the converted phase and must further be approved by fifty-one percent (51%) of all Eligible Unit Mortgagees and all Eligible Insurers or Guarantors of the Units in the converted phase affected.

- h. The specification of rights of the Developer set forth in this Section 9.1 is in addition to all other rights of Developer under law and as set forth in other provisions of this Declaration and the Master Ground Lease.
- i. Consistent with the definition of Developer set forth in Section 1.16 of Article I, Developer includes Declarant Towne as to Phase I, Towne Development or any person or entity to which Towne Development may now or hereafter transfer and assign its leasehold interest under the Master Ground Lease in the Annexable Property or portions thereof and, if the Master Ground Lease is terminated, surrendered or abandoned prior to its expiration date, the Master Ground Lessor as to the Annexable Property and any Units owned by the Developer in any converted phase immediately prior to such termination, surrender or abandonment of the Master Ground Lease.

## ARTICLE X

### ANNEXATION

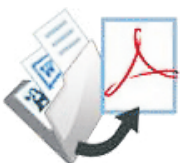
Section 10.1 Developer's Right to Annex: Developer has the right, at any time prior to the date which is seven (7) years after the date on which Developer first sell and transfers a Unit in Phase I and regardless of whether any Period of Developer Control is then in effect, to annex and make subject to this Declaration any Additional Phases of



the Annexable Property. Developer's right of annexation is not subject to the prior consent or approval of any Unit Lessee in a converted phase previously annexed to this Declaration or any other person. Developer's right of annexation is, however, subject to the following requirements and limitations:

- a. The total number of platted Lots or Units in Phase I and all Additional Phases subsequently annexed to this Declaration shall never exceed the total of 528 Lots.
- b. Each Additional Phase, sought to be annexed must be contiguous to phases previously annexed and made subject to this Declaration.
- c. Prior to the annexation of any Additional Phase, the construction of all Common Areas and Facilities planned with respect to such phase must be substantially completed, including, without limitation, private streets, curb and gutter, all utilities necessary to supply service to the Common Areas and all Lots and any recreational facilities planned for such phase, and all Lots must be completed so as to be ready for the commencement of construction of single family residences thereon.
- d. All Unit Lessees within any annexed Additional Phase shall have the same rights and obligations as the Unit Lessees in Phase I as set forth in this Declaration, including, without limitation, the right to one (1) vote in the management and affairs of the Association, an equal right to use and enjoyment of all Common Areas and Facilities within the entire Property in common with all other Unit Lessees of Units within the entire Property and the obligation to pay Regular Monthly Assessments and Special Assessments based on each Unit's Prorate Share of Common Expenses. The actual fractional share of the Prorate Share of Common Expenses will, however, be reduced by the addition of Units by reason of any annexation of Additional Phases, since the Prorate Share of Common Expense is determined on a per capita basis with each Unit paying an equal share of the Common Expenses.

Section 10.2 Procedure for Annexation: Should the Developer (as defined in Section 1.16 of Article I and Section 9.1(i) of Article IX) elect to annex Additional

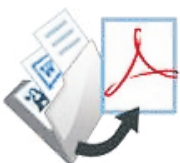


Phases of the Annexable Property, the Developer and Master Ground Lessor, subject only to the requirements of this Section 10.2, shall file with the Office of the County Clerk of Bernalillo County, New Mexico, a Supplemental Plat and Supplemental Declaration. The Supplemental Plat shall clearly describe and show the location of all platted Lots and Common Areas and Facilities within the Additional Phase and any easements or other matters of record which affect the Additional Phase. The Supplemental Plat shall be prepared by a surveyor or engineer licensed under New Mexico law and shall include a metes-and-bounds legal description of the perimeter of the Additional Phase. The Supplemental Plat shall also show the location of all Side-Lot Easements affecting and appurtenant to the Lots within the Additional Phase. The Supplemental Declaration shall recite the fact that Developer has exercised its right to annex the Additional Phase pursuant to this Article X, shall make reference to the Supplemental Plat filed with respect to the Additional Phase being annexed, and may contain other provisions necessary and desirable in connection with the annexation which are consistent with the provisions of this Declaration.

## ARTICLE XI

### ORGANIZATION, DUTIES AND FUNCTIONS OF THE ASSOCIATION

Section 11.1 Authority of Association: The Association has been incorporated and shall be maintained as a New Mexico non-profit corporation. Upon conversion of Phase I and the conversion of any Additional Phase subsequently annexed pursuant to Article X, the Developer shall assign, transfer and convey to the Association (or to a separate Association to be formed) its leasehold estate under the Master Ground Lease in the Common Areas and Facilities of such converted phases free and clear of any liens and encumbrances, but subject to all easements shown on the Initial Plat or any Supplemental. Plat, as applicable, and other matters of record. The Association shall constitute the governing and administrative body for all Unit Lessees of Units within the Property subject to this Declaration for the protection, preservation, upkeep, maintenance, repair, restoration, operation and replacement of the Common Areas and Facilities and the Lot Restricted Areas and the government, operation and administration of all

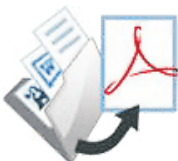


rules and regulations set forth in this Declaration, the By-Laws and the Rules.

Section 11.2 Board of Directors: The affairs of the Association shall be managed by its Board of Directors. All activities, rights, powers, duties, obligations, functions and responsibilities of the Association shall be performed, exercised, discharged and accomplished by or under the supervision of the Board, excepting only in certain instances where this Declaration, the By-Laws or the laws of New Mexico require that a particular action be taken by a vote of the Unit Lessees and Developer\_ The Board shall be elected in accordance with, and shall perform its duties, as set forth in the By-Laws to which reference is hereby made.

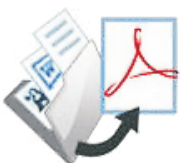
Section 11.3 Rights Functions and Obligations of the Association: In addition to the rights, function;:, duties, obligations and other responsibilities set forth in other provisions of this Declaration, the By-Laws, the Rules and under applicable New Mexico law, the Association shall have the following rights, functions and duties:

- a. Right to Non-exclusive Easement: The Association shall have a non-exclusive right and easement to make such use of the Common Areas and Facilities and Lot Restricted Areas as may be necessary or appropriate for it to perform the duties and functions which it is obligated or permitted to perform under this Declaration, the By-Laws or the Rules and a non-exclusive right of entry, after reasonable notice to the Unit Lessees, into the individual Units as may be necessary for the operation of the Property, or for making emergency repairs therein necessary to prevent damage to any Units or to the Common Areas and Facilities, or any part thereof, or to abate any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in a Unit, except that no notice shall be required in cases of emergency.
- b. Common Areas and Facilities Maintenance: The Association shall be obligated to provide, as a Common Expense, for the care, operation, management, maintenance, repair, replacement and restoration of the Common Areas and Facilities and the Lot Restricted Areas. Without limiting the generality of the



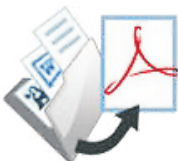
foregoing, said obligations shall include keeping the Common Areas and Facilities and the Lot Restricted Areas in good, clean, attractive and sanitary condition, order and repair, keeping the Common Areas and Facilities and the Lot Restricted Areas safe, attractive and maintained in a manner desirable as a residential community, and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Areas and Facilities and the Lot Restricted Areas.

- c. Other Functions: The Association may undertake or contract for any lawful activity, function or service for the common benefit or to further the common interests of all Unit Lessees. Such activities, functions or services may include, but shall not be limited to: (i) the providing of insurance, police, patrol or similar security services, janitorial services, grounds maintenance or landscaping services, utilities or other services which may be required for the enjoyment or betterment of the Common Areas and Facilities; (ii) security alarm systems, telephone and other communication systems, cable TV, electricity, gas, water, garbage and trash collection and sewage disposal services and other utility services for each of the individual Units to the extent such utilities are master metered and/or paid by the Association; (iii) legal and accounting services necessary or desirable in connection with the operation of the Property or the Association or for the enforcement of the provisions of this Declaration, the By-Laws or the Rules; and (iv) any other services for the benefit and enjoyment of all the Unit Lessees. Electricity, gas, telephone, water, sewage and other utility services separately metered or charged shall be paid for by the Unit Lessee of the Unit to which such utility services are furnished.
- d. Real Estate Taxes: The Association shall have all Common Areas and Facilities assessed in its name and shall pay all real estate, ad valorem, personal property and other taxes and any special assessments for public improvements levied or assessed against or with respect to the Common Areas and Facilities prior to delinquency. Provided, however, that the Association shall have the right to contest any such tax or special assessment and may, if permitted by



law, elect to pay any special assessment in installments. Any payments in the Association pursuant to this provision shall be a Common Expense. Each Unit Lessee shall separately have assessed in his name and pay all ad valorem, real estate, personal property and other taxes levied or assessed with respect to his Lot, Unit and the contents thereof, and the Association shall have no responsibility with respect to such taxes.

- e. Labor and Services: In addition to the employment of a professional management company as required by Section 11.4 below, the Association may, as a Common Expense, obtain and pay for the services of such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Association or the Property, whether such personnel are furnished or employed directly by the Association by any person or entity with whom it contracts.
- f. Acquisition of Personal Property: The Association may acquire, as a Common Expense and hold for the common use and benefit or all Unit Lessees, any tangible or intangible personal property and may dispose of the same by sale or otherwise. Subject to the Rules, each Unit Lessee and each Unit Lessee's Tenant or guests may use such property. All such property so acquired and owned by the Association shall be deemed to be part of the Common Areas and Facilities for all purposes.
- g. Rules and Regulations: The Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of the individual Units and the Common Areas and Facilities. Such rules and regulations may, without limitation: (i) regulate the use of Common Areas and Facilities to assure the equitable and proper use and enjoyment thereof by all persons entitled thereto, (ii) prohibit any conduct or activity in any Unit or on any part of the Common Areas and Facilities which constitutes a nuisance in law or in fact or which would not be consistent or in keeping with the peaceful, quiet and reasonable use and enjoyment of any Unit or the Common Areas and Facilities, (iii) prohibit, restrict or regulate the use of any portion of the Common Areas and Facilities by the guests and tenants of any Unit Lessee and (iv)

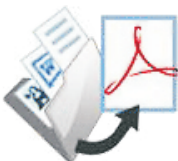


regulate and control vehicular traffic and the parking and storage areas of the Property subject to this Declaration. The Association shall have the right to enforce any such Rules and the obligations of any Unit Lessee under this Declaration and the By-Laws, including, without limitation, the right to levy fines and/or suspend membership and voting rights or rights to use the Common Areas and Facilities pursuant to the procedures set forth in the By-Laws and the right to commence and prosecute appropriate legal proceedings for monetary damages and injunctive relief.

- h. Assessments: The Association shall be responsible for determining the amount of and collecting all Regular Monthly Assessments, Special Assessments and Individual Assessments as provided in Article XII and for the collection of payments to reimburse the Association for disbursements from the Ground Rent Reserve as set forth in Article XIII.
- i. Investment of Funds: The Association shall have the authority to invest all funds of the Association not immediately needed to pay Common Expenses, including funds held by the Association in the Ground Rent Reserve, Replacement Reserve and Working Capital Reserve.

(j) Income Taxes and Returns: The Association shall file, if and when required, all federal and state income tax returns and shall pay income taxes due, if any, with respect to any taxable income of the Association.

(k) Contracts with Robert E. Towne: The Association is authorized to enter into a contract with Robert E. Towne (or any entity which is controlled by Robert E. Towne or in which Robert E. Towne owns the majority ownership interest) providing for the installation, maintenance and supply of cable t.v., security alarms or other communications systems to the Association and/or to the Units on either a voluntary or mandatory basis, but only if the fees and charges for any such service provided by Robert E. Towne is not more than ninety-five percent (95%) of the fees and charges of the dominant supplier of the particular service involved in Albuquerque, New Mexico, during the term of any such contract.



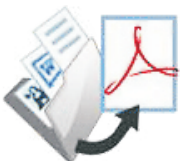


Section 11.4 Professional Management: The Board shall employ a professional management company qualified to administer the affairs of the Association and to supervise the operation, maintenance and repair of the Common Areas and Facilities, including without limitation, the collection of assessments, custody of Association funds and payment of Common Expenses and the performance of any additional duties of the Board which the Board, by contract or otherwise, may delegate to such professional management company. Any such employment arrangement shall be in writing. Any management agreement entered into between the Association and the Developer (or any person or legal entity controlled by Developer) shall contain a provision permitting either party thereto to terminate such management agreement, with or without cause, upon not more than ninety (90) days prior written notice. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Developer) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice. For purposes of this provision, any professional management company shall be considered controlled by the Developer if either the person or legal entity which is the professional management company or the Developer: (i) is a general partner, officer, director or employee of the other; (ii) directly or indirectly acting in concert with one or more persons, or through one or more subsidiaries, owns, controls or holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting shares of the other; (iii) controls in any manner the election of a majority of the directors of the other; or (iv) has contributed more than twenty percent (20%) of the capital of the other.

## ARTICLE XII

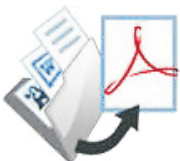
### COMMON EXPENSE FUND, ASSESSMENTS AND COLLECTION

Section 12.1 Budget: Not later than thirty (30) days prior to the commencement of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, an estimated annual budget for each fiscal year of the Association projecting all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Property.



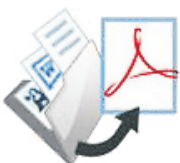
Provided, however, that the first budget shall be prepared prior to the commencement of Regular Monthly Assessments as determined by Section 12.2 below and such initial budget may cover a period of less than twelve (12), or more than twelve (12), months depending on the fiscal year of the Association adopted by the Board. Such budgets shall take into account the estimated Common Expenses and cash requirements for the year, including, but not limited to, the costs of salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, and expenses which the Board shall deem necessary or proper for the fulfillment and performance of the functions and obligations of the Association. The annual budget shall also take into account and provide for a reserve for contingencies for the year and a Replacement Reserve for periodic maintenance, repairs and replacements of the Common Areas and Facilities in reasonable amounts. Any surplus or deficit in regard to previous budgets shall also be considered. Each annual budget shall take effect on the first day of the fiscal year for which it is prepared. If it shall appear to the Board at any time that the budget adopted for any fiscal year shall be insufficient, the Board may revise such budget to cover the estimated deficiency, to become effective on the first day of the calendar month next following the revisions. The Budget, and any revision thereof, shall serve as the basis for the Regular Monthly Assessments to be paid by each Unit Lessee. In the event the Board shall fail to adopt a budget, the budget last adopted, and any revision thereof, shall continue to serve as the basis for the Regular Monthly Assessments until a new budget is adopted. In the event that the Board at any time determines that the Regular Monthly Assessments so levied are or may prove to be insufficient to pay unforeseen and non-recurring costs of operation and management of the Property for such fiscal year or in the event of casualty losses, condemnation losses or other events (including non-payment of Regular Monthly Assessments by some Unit Lessees) which require additional funds be supplied for preservation and operation of the Property, the Board shall have the authority at any time or from time to time to levy such special assessments as it shall deem necessary for that purpose.

Section 12.2 Commencement of Regular Monthly Assessments and Working Capital Contributions: Except for Units owned by the Developer, Regular Monthly Assessments shall commence with respect to Units in Phase I not later



than sixty (60) days after the conversion of Phase I and, as to any Units in Additional Phases subsequently annexed, Regular Monthly Assessments shall commence not later than sixty (60) days after any such Additional Phase is converted. Subject to the foregoing requirements and limitations, the Board shall, by resolution, establish the commencement date of Regular Monthly Assessments. The first Unit Lessee of each Unit (but not Developer) shall be required to pay the Association, at the time such Unit Lessee consummates the purchase of his Unit or enters into the Unit Lease, a working capital contribution equal to twice the amount of the Regular Monthly Assessment then in effect or, if no Regular Monthly Assessment has then been established by the Board, such Unit Lessee shall pay the Association a working capital contribution equal to twice the estimated Regular Monthly Assessment determined by Developer. All such working capital contributions shall be deposited in the Working Capital Reserve to be held and invested by the Association and used by the Association as it deems necessary to defray Common Expenses. The working capital contributions required by this provision are not refundable to the Unit Lessees or transferable by the Unit Lessees upon subsequent sales or transfers of the Units, but are for the sole use and benefit of the Association.

Section 12.3 Developer's Obligations to Pay Deficit Amount or Assessments: Developer shall be obligated to pay the Deficit Amount (as defined in Section 1.15 of Article I) during any month in which the Total Revenues of the Association (together with any funds available in the Working Capital Reserve) are not sufficient to pay Operating Expenses of the Association for that month. Provided, however, that the Developer may elect to subject all Units owned by Developer to the obligation to pay the same Regular Monthly Assessments as required of the Unit Lessees with respect to each Unit owned by Developer by giving written notice of such election to the Association. From and after the date of receipt by the Association of any such written notice of election by the Developer, the Developer's obligation to pay the Deficit Amount pursuant to this provision shall cease and terminate and all Units then owned by Developer shall be subject to the Regular Monthly Assessment. If the Developer elects to pay the Deficit Amount monthly, rather than pay Regular Monthly Assessments on Units owned by Developer, then Developer shall further be obligated upon each sale of a Unit to pay to the Association an additional payment equal to that

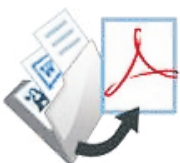


portion of the Regular Monthly Assessment allocated to the Replacement Reserve as shown by the Association's Budget multiplied by the number of months, or portion thereof, from the date on which the first Unit in the phase of which the sold Unit is a part was sold and conveyed to the date of sale and conveyance of the Unit for which the additional payment is required.

Section 12.4 Limitation on Regular Monthly Assessment Increases: The Board shall prepare the first budget and levy the initial Regular Monthly Assessment based thereon. Thereafter, the Board shall have discretion to adjust the budget for each subsequent fiscal year and to change the amount of Regular Monthly Assessments. Provided, however, that the Board shall not increase the Regular Monthly Assessment for any Unit by an amount in excess of twenty percent (20%) of the average Regular Monthly Assessment for the immediately preceding fiscal year of the Association, unless a majority of the Unit Lessees (including the Developer), voting in person or by proxy, approve such an increase at a special meeting of the Unit Lessees called pursuant to the By-Laws.

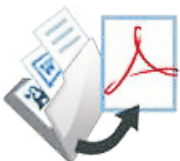
Section 12.5 Common Expenses: Except as provided in Section 12.2 and 12.3 above, all Unit Lessees (including the Developer) are bound to contribute their Prorate Share of Common Expenses to the payment of all Common Expenses of the Association. No Unit Lessee shall be exempt from said obligation by suspension of his use or enjoyment of the Common Areas and Facilities or by abandonment of the Unit belonging to him. Each Unit Lessee shall, however, be relieved of any personal liability for Regular Monthly Assessments and Special Assessments levied or accruing with respect to his Unit after the date on which the Unit Lessee sells, assigns or transfers the entire leasehold estate in his Unit for the remaining term of the Unit Lease. Each Unit Lessee shall pay his Prorate Share of the Common Expenses as evidenced by the budget in twelve (12) equal Regular Monthly Assessments. Prior to the due date of the first Regular Monthly Assessment each year, the Board, or its representative, shall prepare and deliver to each Unit Lessee a statement setting forth the amount: of the Regular Monthly Assessment due from each Unit Lessee, together with a copy of the annual budget for that year.

Section 12.6 Payment of Regular: Monthly Assessments, Special Assessments and Individual Assessments: Regular



Monthly Assessments shall be due and payable monthly in advance on the first day of each month. Special Assessments and Individual Assessments shall be payable on or before ten (10) days after Unit Lessees are invoiced therefore unless the written notice thereof provides otherwise. Payment of Regular Monthly Assessments, Special Assessments and Individual Assessments shall be in default if not paid to the Association on or before ten (10) days after the due date for such payment and shall bear interest at the Default Interest Rate until paid. In addition, the Board may establish a late charge of not to exceed the greater of Ten Dollars (\$10.00) or fifteen percent (15%) of the amount of any Regular Monthly Assessment not paid within ten (10) days after its due date. Each Unit Lessee (whether one or more persons) shall be personally liable for the payment of all Regular Monthly Assessments, Special Assessments and Individual Assessments, which may be levied against such Unit Lessee and his Unit pursuant to the provisions hereof. In the event any Mortgagee succeeds to the Unit Lessee's leasehold estate in any Unit pursuant to foreclosure or conveyance in lieu of foreclosure, then such Mortgagee shall not be liable for the payment of any unpaid Regular Monthly Assessments or Special Assessments levied against the Unit Lessee and his Unit which accrued prior to the acquisition of the Unit by the Mortgagee; nor shall any such Mortgagee who acquires title to the leasehold interest in the Unit pursuant to foreclosure or conveyance in lieu of foreclosure be subject or subordinate to any Individual Assessment as to which the Association failed to file a recorded Notice of Assessment Lien pursuant to Section 12.11 below prior to recordation of such Mortgagee's mortgage.

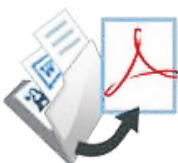
Section 12.7 Individual Assessment: The Association shall have the right to levy and collect Individual Assessments against particular Unit Lessees in any of the following circumstances: (a) to reimburse the Association for disbursements made from the Ground Rent Reserve to Master Ground Lessor to pay delinquencies under any Unit Lease pursuant to Section 13.3 of Article XIII; (b) to reimburse the Association for the costs of Exterior Unit Maintenance performed by the Association because of such Unit Lessee's failure or refusal to perform Exterior Unit Maintenance as required by Sections 8.2 and 8.3 of Article VW; (c) to reimburse the Association for casualty insurance premiums on each Unit Lessee's Unit as required by Section 14.5 of Article XIV; (d) to reimburse the Association for



any damages of any nature caused by any such Unit Lessee's violation of any provision of this Declaration, the By-Laws or the Rules; and (e) to reimburse the Association for any funds advanced by the Association to cure any failure or refusal of any such Unit Lessee to perform any of its obligations under this Declaration, the By-Laws or the Rules. Any such Individual Assessment shall constitute a personal obligation of the Unit Lessee and a lien against his Unit in favor of the Association. Individual Assessments shall bear interest at the Default Interest Rate and shall be payable and collected in the same manner as Special Assessments pursuant to the provisions of this Article XII.

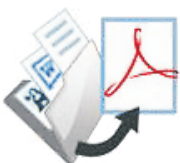
Section 12.8 Replacement Reserve: The association shall establish and maintain a reserve fund for replacements by the allocation and payment monthly to such reserve fund of a specified portion of the Regular Monthly Assessments. Such funds shall be deposited in a special account with a financial institution selected by the Board. The funds in the Replacement Reserve may be expended only for the purposes of effecting the replacement, periodic maintenance or repair of the Common Areas and Facilities and for operating contingencies of a non-recurring nature. The amounts required to be allocated to the Replacement Reserve may be reduced by appropriate resolution of the Board, at such time as the Board determines, in its reasonable judgment, that the amount accumulated in the Replace Reserve is sufficient to pay for all reasonably foreseeable periodic maintenance and capital replacements. The proportionate interest of any Unit Lessee in the Replacement Reserve is not refundable to any Unit Lessee or transferable by Unit Lessees upon subsequent sales or transfers of the Units, but such funds are for the sole use and benefit of the Association.

Section 12.9 Assessment Certificates: The Board, or its representative, shall furnish to any prospective purchaser or prospective mortgagee of any Unit, at the request of the Unit Lessee, a written certificate as to the amount of the Regular Monthly Assessments, Special Assessments and any Individual Assessments which have become due and are unpaid as of a given date with respect to the Unit. In the event of a sale, the purchaser shall not be liable nor shall the Unit purchased be liable or subject to any lien for any unpaid assessments, which are due and not shown on such certificate for the period of



time covered thereby. However, the selling or mortgaging Unit Lessee shall be liable for same and in case of his failure or refusal to pay, then the same shall be collectible from all other Unit Lessees, as a Common Expense and in proportion to their Prorate Share of Common Expenses and the Association, acting on their own behalf, shall have recourse against the selling or mortgaging Unit Lessee. In the event of a mortgage, the unpaid assessments not shown on said certificate for the period of time covered thereby shall remain the obligation of the Unit Lessee mortgaging his Unit, but the assessment lien securing same as provided for in this Declaration shall be and remain inferior and secondary to the Mortgage and liens held by any such mortgagee to whom or for whose information said certificate was furnished. A charge not to exceed Fifty Dollars (\$50.00) may be levied in advance by the Association for each certificate so delivered. The Association shall not, however, charge any Eligible Unit Mortgagee or Eligible Insurer or Guarantor for providing any information, which the Association is obligated to provide pursuant to Article XV of this Declaration.

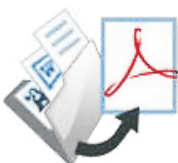
Section 12.10 Liens to Secure Assessments: All Regular Monthly Assessments, Special Assessments and Individual Assessments shall be a personal obligation of the Unit Lessee of each Unit, as well as an indebtedness against the Unit itself; and in the event any default is made in the payment of such assessments, or any part thereof, as the same shall become due and payable, then a valid lien is hereby created against the Unit of the Unit Lessee in default, which lien shall exist for the benefit of all other Unit Lessees and the Association. No liens shall exist against any Unit for assessments, which have not yet become due and payable. The liens provided for herein shall be prior to all other liens, except that such liens shall be subordinate, secondary and inferior to: (i) all liens for real estate taxes or special assessments levied by taxing authorities having jurisdiction; (ii) all liens securing amounts due or to become due under any Mortgage, vendor's lien or deed of trust creating a lien against the Unit and which was recorded prior to the date the Regular Monthly Assessment or Special Assessment became due and payable; (iii) all liens securing any loan made to any Unit Lessee for any part of the purchase price of any Unit when such Unit is purchased from the Developer; and (iv) the reversionary fee interest of the Master Ground Lessor under the Master Ground Lease. Such liens may be foreclosed,



without prejudice and subject to the aforesaid prior and superior liens, by suit by the Association or any person authorized by the Association, in the same manner as mortgages on real property. No foreclosure suit or sale thereunder shall affect or impair any of the prior and superior liens above mentioned. The Association, or any person authorized by it, shall have power to bid in the Unit foreclosed on at the foreclosure sale, the amount of which bid shall not exceed the total amount of all assessments in default, interest at the Default Interest Rate and other charges thereon, attorneys' fees and costs of foreclosure. In the event the Association shall purchase any Unit at any such foreclosure sale, it shall have authority to hold, lease, mortgage, sell or convey the Unit. The Association shall be entitled to the appointment of a receiver upon the filing of any foreclosure proceedings without regard to the value of the Unit or the solvency of the Unit Lessee. All funds realized from the foreclosure sale shall be applied first to the cost and expense of filing and prosecuting the suit, including all court costs and reasonable attorneys' fees, and then towards payment of the indebtedness sued on, together with interest at the Default Interest Rate and other charges thereon, and the remainder, if any, shall belong to the Association subject to the rights, if any, of the defendants in the foreclosure proceeding.

Section 12.11 Recordation of Notice of Assessment Lien: The Association shall be entitled to record a "Notice of Assessment Lien" in the Real Estate Records of Bernalillo County, New Mexico, with respect to any Regular Monthly Assessment, Special Assessments, Individual Assessments not paid by any Unit Lessee within thirty (30) days after it is due. Any such Notice of Assessment Lien shall identify the Unit, which is subject thereto and may contain such other information as the Board determines to be appropriate or relevant, including the nature and amount of the lien.

Section 12.12 Common Expense Fund: All Regular Monthly Assessments and Special Assessments collected shall be paid into the Common Expense Fund to be held and used for the benefit, directly or indirectly, of the Property. The Common Expense Fund may be expended by the Association, or any person authorized by it, for the purposes set forth in this Declaration, the By-Laws and the Rules in such manner as the Board shall determine.





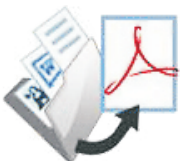
## ARTICLE XIII

### GROUND RENT RESERVE

Section 13.1 Establishment of Reserve: The Developer is required to contribute and pay to the Association the sum of One Hundred Fifty-Five Dollars (\$155.00) for each Unit sold and transferred by Developer to Unit Lessees. Such Developer contributions shall be made for each Unit when the Master Ground Lessor and Unit Lessee enter into the Unit Lease for that Unit. All such Developer contributions, together with interest or earnings thereon, shall constitute the Ground Rent Reserve to be held by the Association in a segregated account and used and disbursed by the Association as provided in this Article XIII. The Association is authorized to invest all funds in the Ground Rent Reserve as directed by the Board. The Association shall not be liable for any loss resulting from any such investments. The Association may commingle all funds in the Ground Rent Reserve and is not obligated to separately account to Unit Lessees as to what portions of said funds are allocable to each Unit. All funds in the around Rent Reserve are for the sole use and benefit of the association as provided in this Article XIII and no Unit Lessee shall have any interest, right or claim to said funds, except as expressly provided in this Declaration.

Section 13.2 Disbursements to Pay Delinquencies under Unit Leases: Since the reversionary fee interest of the Master Ground Lessor under the Master Ground Lease is not to be subordinated to mortgages against the Units, the Developer has elected, in order to induce such mortgagees to make loans secured by the Units, to establish the Ground Rent Reserve to partially secure monthly rental payments under the Unit Leases as hereinafter provided. For such reasons, the Association is hereby obligated and directed to pay from the Ground Rent Reserve the monthly rental payments due the Master Ground Lessor under any Unit Lease whenever any such monthly rental payment is more than ten (10) days delinquent (herein "delinquency payments"). Provided, however, that the Association shall not pay Master Ground Lessor delinquency payments with respect to any single Unit Lease in an amount in excess of five (5) months of the then current monthly rentals required by any such Unit Lease.

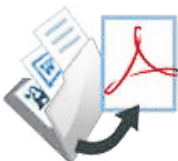
Section 13.3 Unit Lessees' Obligations to Reimburse Delinquency Payments: Although the Unit Lessees did not



provide the funds necessary to establish the Ground Rent Reserve, each Unit Lessee shall be obligated to reimburse the Association for any delinquency payments made by the Association to the Master Ground Lessor from the Ground Rent Reserve with respect to such Unit Lessee's failure to pay monthly rentals required under such Unit Lessee's Unit Lease. After each disbursement by the Association from the Ground Rent Reserve to pay delinquency payments, the Association shall immediately levy an Individual Assessment for the amount of the delinquency payment paid by the Association against the Unit Lessee and the Unit involved. Such Individual Assessments shall constitute a personal obligation against the Unit Lessee and a lien against the Unit involved and shall be collectible by the Association, together with interest thereon at the Default Interest Rate, in the same manner as other Individual Assessments as provided in Article XII.

Section 13.4 Payment by Association Does Not Cure Default: As more particularly set forth in the Unit Lease, payment by the Association of a delinquency payment does not cure the Unit Lessee's default for failure to pay monthly rentals and the Unit Lessee may only cure such default by reimbursement to the Association as required by Section 13.3 of this Article XIII. The Unit Lease also provides that any failure of a Unit Lessee to comply with the requirements of this Declaration, the By-Laws or the Rules (including, without limitation, failure to reimburse delinquency payments as required by Section 13.3 of Article XIII) constitutes a default under the Unit Lease.

Section 13.5 Maximum Reserve Requirement and Other Disbursements: Until the aggregate sum of funds in the Ground Rent Reserve (including interest and earnings thereon) attain the sum of One Hundred Forty-Four Thousand Dollars (\$144,000.00) [herein "the Maximum Reserve Requirement"], or during such periods of time that the aggregate funds in the Ground Rent Reserve are reduced below the Maximum Reserve Requirement, the Association may only use and disburse funds from the Ground Rent Reserve to pay delinquency payments to the Master Ground Lessor as required by Section 13.2 of this Article XIII. To the extent that the aggregate funds in the Ground Rent Reserve ever exceed the Maximum Reserve Requirement (herein "Excess Funds"), the Association shall have the right to disburse Excess Funds from the Ground Rent Reserve as the Board shall determine appropriate for the benefit of the



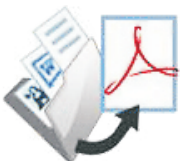
Association and the Unit Lessees, including, without limitation, the right to transfer such Excess Funds to the Working Capital Reserve, Replacement Reserve or Common Expense Fund or to otherwise expend such Excess Funds to pay Common Expenses or reduce Regular Monthly Assessments.

#### ARTICLE XIV

##### INSURANCE

Section 14.1 Association Casualty Insurance: The Association shall procure and maintain, as a Common Expense, a casualty insurance policy insuring the full insurable replacement cost of all improvements, fixtures, equipment, personal property and Common Facilities now or hereafter owned by the Association against loss due to fire and all other hazards normally covered by "extended coverage" and "all risk" endorsements. The "full insurable replacement cost" means an amount equal to one hundred percent (100%) of current replacement cost as determined from time to time by the Board in consultation with the insurance company. The casualty insurance policy required by this provision must be issued by insurers of recognized financial responsibility authorized to issue such insurance in the State of New Mexico. Such policy shall, if commercially feasible, contain the following endorsements:

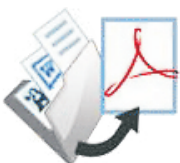
- a. An endorsement for vandalism and malicious mischief;
- b. If applicable, a steam boiler endorsement for loss or damages resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location;
- c. If available, an Agreed Amount and Inflation Guard Endorsement; and
- d. If the Property is subject to construction code provisions which would require changes to the existing plans, specifications and/or construction of any insured buildings upon reconstruction following destruction or damage, thereby imposing significant additional costs, then the policy shall contain, if available, appropriate construction code endorsements, such as Demolition Cast Endorsement, Contingent Liability from Operation of Building Law Endorsement and an Increased Cost of Construction Endorsement.



The insurance policy required by this provision shall further provide that it shall not be cancelled for non-payment of premiums or for any other cause without at least ten (10) days' prior written notice to the Association. In case of any injury, damage or destruction, the insurance proceeds shall be applied only reconstruct or repair the property so damaged or destroyed, except as may be otherwise provided for herein. The Association shall have complete power and authority to compromise, settle and adjust any and all claims arising under any such policy. The Association must maintain the original of the policy in its files. Copies of the policy will be made available upon request to any Unit Lessee, Mortgagee listed in the policy as an additional insured or loss payee, or any Eligible Unit Mortgagee or Eligible Insurer or Guarantor.

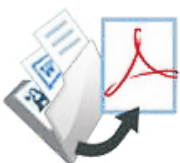
Section 14.2 Flood Insurance: If the Property subject to this Declaration is now or hereafter located within an area having special flood hazards as determined by the Federal Emergency Management Agency by publication in the Federal Register of a Flood Insurance Boundary Map or Insurance Rate Map and if flood insurance has been made available under the National Flood Insurance Program, the Association must procure and maintain a flood insurance policy with respect to the Common Areas and Facilities and all improvements and personal property owned by the Association to the extent that same may be insurable under the available form of policy (herein "insurable property") in an amount at least equal to the lesser of: (i) the maximum coverage available under the National Flood Insurance Program for the buildings and other insurable property or (ii) the "full insurable replacement cost", as that term is defined in Section 14.1 above, of the buildings and other insurable property. Such flood insurance policy, if required, shall be issued in the name of the Association; any proceeds of such policy shall be used to repair and restore any damage caused by flood; and the cost of any such policy shall constitute a Common Expense.

Section 14.3 Fidelity Bond: The Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including funds in the Replacement Reserve, Working Capital Reserve and Ground Rent Reserve, at any given time during



the term of such bond, but in any event in an amount at least equal to three (3) months' aggregate Regular Monthly Assessments on all Units plus the sum of all reserve funds. Such fidelity bond shall cover all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including the officers, directors, employees and agents of the professional management company employed by the Association. Provided, however, that the fidelity bond to be procured by the Association need not cover the professional management company and its officers, directors, employees and agents, if such professional management company provides a sufficient fidelity bond naming the Association as an additional obligee or loss payee. Such bond shall contain a waiver of any defense or exclusion based upon the exclusion of persons serving without compensation from the definition of "employees" or other similar terms or expressions. Such bond shall require at least ten (10) days' prior written notice to the Association of cancellation or substantial modification (including cancellation for non-payment of premiums). The cost of such fidelity bond (except for premiums on any fidelity bond provided by the professional management company which the Board determines to be satisfactory and in compliance with the provisions of this Section) shall constitute a Common Expense.

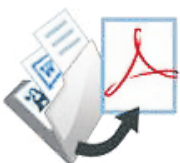
Section 14.4 Liability Insurance: The Association shall procure and maintain comprehensive public liability insurance in the amount of at least One Million Dollars (\$1,000,000) per person and Three Million Dollars (\$3,000,000) per single occurrence for bodily injury or death and Fifty Thousand Dollars (\$50,000) for property damage suffered by the public or any Unit Lessee and his tenants, family, guests, agents, employees or invitees occurring in, on or about the Units, the Common Areas and Facilities or the private and public streets, driveways, roadways, sidewalks, and other passageways on or adjoining the Property. Such policy shall insure the Unit Lessees and the Association and its officers, directors, employees and agents, including expressly the professional management company and its officers, directors, employees and agents and shall further expressly cover legal liability arising from lawsuits related to employment contracts of every nature to which the Association is a party. Such policy shall be issued by insurers of recognized responsibility authorized to issue such insurance within the State of New



Mexico and shall require at least ten (10) days' prior written notice of cancellation or substantial modification (including cancellation for non-payment of premiums) to the Association. The cost of such policy shall constitute a Common Expense. Such insurance must not provide for contribution with regard to any policies of liability insurance carried individually by any Unit Lessee.

Section 14.5 Unit Casualty Insurance and Individual Assessment: Each Unit Lessee shall procure and maintain, at such Unit Lessee's sole cost and expense, a casualty insurance policy insuring the full insurable replacement costs of all improvements and fixtures now or hereafter constructed within the Lot Building Area of such Unit Lessee's Lot, against loss due to fire and other hazards normally covered by "extended coverage" and "all risk" endorsements. As used in this provision, "full insurable replacement cost" has the same meaning as set forth in Section 14.1 above. The casualty insurance policy required by this provision must be issued by insurers of recognized financial responsibility authorized to issue such insurance in the State of New Mexico. Such policy shall name the Association as the insured, as Trustee for the Unit Lessee, and any Mortgagee having a lien against the Unit. If any Unit Lessee fails, neglects or refuses to procure the casualty insurance required by this provision or to provide a certificate of insurance or other proof thereof satisfactory to the Association, the Association shall have the right, but not the obligation, to purchase such insurance in its name as Trustee for the Unit Lessee. Should the Association elect to purchase such insurance, the cost thereof shall be levied as an Individual Assessment against the Unit Lessee and his Unit. In the event of damage or destruction to any Unit by fire or other hazard covered by the casualty insurance policy required by this provision, the Association shall, subject to any rights of any Mortgagee having a lien against the Unit, use the proceeds of any such casualty insurance policy to replace, repair and restore the Unit to its original condition as far as reasonably practicable. Each Unit Lessee shall be responsible for procuring and maintaining such casualty insurance as such Unit Lessee desires with respect to the personal property and contents within his Unit.

Section 14.6 Additional Insurance: The Board shall have the authority to obtain such other insurance, in



addition to that required by this Article XIV, as the Board shall determine to be necessary or advisable. The cost of any such additional insurance shall constitute a Common Expense.

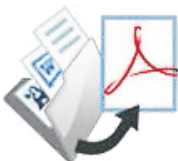
## ARTICLE XV

### RIGHTS OF ELIGIBLE UNIT MORTGAGEES AND ELIGIBLE INSURERS AND GUARANTORS

Section 15.1 Right to Notice: The Association shall provide all Eligible Unit Mortgagees and all Eligible Insurers and Guarantors with timely written notice of the following:

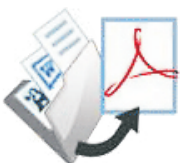
- (a) Any condemnation loss or any casualty loss which affects a material portion of the Common Areas and Facilities or any Unit which is subject to a first mortgage held, insured or guaranteed by any Eligible Unit Mortgagee or any Eligible Insurer or Guarantor.
- b. Any delinquency in the payment of assessments or other charges due the Association by the Unit Lessee of any Unit which is subject to a first mortgage held, insured or guaranteed by any Eligible Unit Mortgagee or Eligible Insurer or Guarantor and which delinquency remains uncured for a period of sixty (60) days or more.
- c. Any lapse, cancellation or substantial modification to the amount or scope of any insurance policy or fidelity bond which the Association is required to procure and maintain pursuant to Article XIV of this Declaration.
- d. Any proposed action, which would require the consent or approval of a specified percentage of Eligible Unit Mortgagees as provided in Section 15.2 below.

Section 15.2 Approval Rights of Eligible Unit Mortgagees: Except where a higher percentage is otherwise specified below, the prior written approval of fifty-one percent (51%) of the Eligible Unit Mortgagees (based on one vote for each first mortgage held against a Unit) shall be required before the Association shall be entitled to do any of the following:



- a. By act or omission seek to abandon or terminate the Declaration prior to the expiration date of the Master Ground Lease (but as to this subparagraph (a) the affirmative vote of sixty-seven percent (67%) of Eligible Unit Mortgagees shall be required.)
- b. Change the method of determining the Prorata Share of Common Expenses for the purpose of levying Regular Monthly Assessments and Special Assessments.
- c. Change the method of distribution of casualty insurance proceeds to Unit Lessees in the event of substantial damage or destruction to the Common Areas and Facilities from that set forth in Article XVI.
- d. Change the method of distribution of condemnation proceeds to Unit Lessees in the event of total or partial condemnation of the Common Areas and Facilities from that set forth in Article XVII.
- e. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or Facilities, or any portion thereof, except with respect to easements for utilities or other public purposes consistent with the intended use of such Common Areas and Facilities.
- f. Distribute insurance proceeds resulting from a casualty or peril insured by the Association pursuant to Article XIV for purposes other than restoration, repair or replacement of the property so damaged or destroyed (but as to this subparagraph (f) the affirmative vote of sixty-seven percent (67%) of Eligible Unit Mortgagees shall be required).
- g. Any decision to terminate the employment of any professional management company as required by Section 11.4 of Article XI or to allow the Association to establish self-management with respect to the Property.

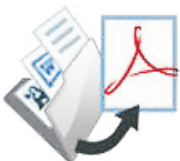
Section 15.3 Amendments to Constituent Documents: In addition to the approval required of the Unit Lessees for amendments to this Declaration and the Articles and the approval required of the Board for amendments to the By-Laws and Rules (all of which documents are herein called "the Constituent Documents"). the prior written approval of





fifty-one percent (51%) of the Eligible Unit Mortgagees (based on one vote for each first mortgage held against a Unit) shall be required to add to or amend any material provisions of the Constituent Documents which establish, provide for, govern or regulate any of the following:

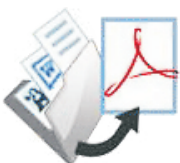
- a. Voting;
- b. Assessments, assessment liens or the subordination of such liens;
- c. Reserves for maintenance, repair or replacement of the Common Areas and Facilities;
- d. Insurance or Fidelity Bonds;
- e. Rights to use the Common Areas or Facilities;
- f. Responsibility for maintenance and repair of the Common Areas and Facilities and Lot Restricted Areas, or any portions thereof;
- g. The withdrawal of any real estate from the provisions of this Declaration previously annexed pursuant to Article X or the addition or annexation of any real estate to this Declaration other than Phase I and the Annexable Property,
- h. The boundaries of any Unit;
- i. The ownership of the leasehold interest in the Units and Common Areas and Facilities;
- j. The convertibility of Units into Common Areas and Facilities or of Common Areas and Facilities into Units;
- (k) The leasing of Units;
- (l) The imposition of any right of first refusal or similar restriction on the right of a Unit Lessee to sell, transfer, encumber or otherwise convey his or her Unit; or
- (m) Any provisions for the express benefit of mortgagees having a lien against any Unit or Eligible Insurers and Guarantors.



Notwithstanding the foregoing, no addition or amendment to the Constituent Documents shall be considered material if it is for the purpose of correcting technical errors, or for clarification only. Further, any Eligible Unit Mortgagee who receives a written request to approve any addition or amendment subject to this Section which does not involve a material change, and who fails or neglects to deliver or mail, postage prepaid, a negative written response within thirty (30) days after such receipt, shall be deemed to have approved such request for each mortgage held by such Eligible Unit Mortgagee.

Section 15.4 Right of Mortgagees to Make Advances: Upon the failure of the Association to perform any of its obligations under this Declaration, the Articles or the By-Laws, any Mortgagee having a first lien against any Unit, either singly or jointly with other such Mortgagees, shall have the right, but not the obligation, to perform the Association's obligations as aforesaid, including without limitation, the maintenance and repair of the Common Areas and Facilities, the procurement of any insurance or fidelity bond coverage required by Article XIV, and the payment of any tax or special assessment levied against the Common Areas and Facilities. Should any such Mortgagee advance funds to cure any default by the Association with respect to its obligations as aforesaid, such Mortgagees shall be entitled to immediate reimbursement from the Association with interest, at the rate specified in the note secured by the mortgage pursuant to which such Mortgagee makes the advance, and the amount of such advances, with interest as aforesaid, shall constitute a lien against the funds of the Association, including all future assessments collected by the Association from the Unit Lessees and all reserve funds of the Association (except the Ground Rent Reserve) until such advance and the interest thereon, has been paid in full.

Section 15.5 Right to Inspect Association Records and Audit: The Association shall permit the inspection and copyin<sup>g</sup> of all Association books and records during normal business hours, or under other reasonable circumstances, by the Master Ground Lessor, any Unit Lessee, any mortgagee having a lien against any Unit and any Eligible Insurer or Guarantor, or the attorneys for any such persons. In addition, any mortgagee holding a first lien on any Unit or any Eligible Insurer or Guarantor shall be entities, upon request, to an audited financial statement for the



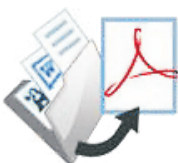
immediately preceding fiscal year of the Association free of charge to the party so requesting. The cost of any such audit, if requested, shall constitute a Common Expense.

## ARTICLE XVI

### DISTRIBUTION OF INSURANCE PROCEEDS

Section 16.1 Reconstruction and Application of Insurance Proceeds: if less than two-thirds (2/3) of the improvements located on the Common Areas are damaged or destroyed by a casualty or peril insured against pursuant to Section 14.1 of Article XIV, the Association shall use the casualty insurance proceeds to repair and restore the damaged improvements to their original condition as far as reasonably practicable. If more than two-thirds (2/3) of said improvements are damaged or destroyed by such an insured casualty or peril, then the insurance proceeds shall be used to repair and restore the property so damaged, unless: (i) seventy-five percent (75%) of the Unit Lessees (including Developer) vote, in person or by proxy, to have such insurance proceeds distributed at a special meeting called pursuant to the By-Laws, and (ii) at least sixty-seven percent (67%) of the Eligible Unit Mortgagees (based on one (1) vote for each first mortgage held against a Unit) approve the distribution of the insurance proceeds. The Board shall have the authority to determine whether more or less than two-thirds (2/3) of said improvements have been damaged or destroyed. If reconstruction is required as herein provided, and should the insurance proceeds be insufficient to fully repair and restore, then the Board may levy a Special Assessment in the amount of such deficiency against all Unit Lessees in proportion to their Prorata Share of Common Expenses. If more than two-thirds (2/3) of the said improvements are damaged or destroyed and the Unit Lessees and Eligible Unit Mortgagees elect to distribute the insurance proceeds as aforesaid, rather than reconstruct, then such insurance proceeds shall be distributed pursuant to the provisions of Section 16.2 below.

Section 16.2 Distribution of Casualty Insurance Proceeds: In the event casualty insurance proceeds are to be distributed as permitted by Section 16.1 above, then such insurance proceeds shall be divided and paid to each Unit Lessee (including the Developer) on a per capita basis and distributed in the following priority:

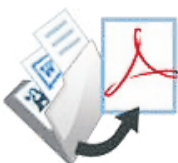


- a. To the payment of any real estate taxes or assessments by governmental agencies having jurisdiction which are past due with respect to such Unit;
- b. To the payment of any recorded Mortgages or other recorded liens against such Unit in the order of their priority;
- c. To the payment of any unpaid Regular Monthly Assessments, Special Assessments or Individual Assessments then due against such Unit; and
- d. Any balance remaining shall be paid to the Unit Lessee or Developer, as applicable, who owns the Unit.

The Board shall have the authority to obtain a title search as to the status of legal title of each Unit prior to any distribution of insurance proceeds under this Section. The cost of such title searches shall constitute a Common Expense. Should the Board obtain such title searches, a copy thereof shall be provided to each Unit Lessee with respect to his Unit. If any Unit Lessee fails or neglects to object in writing to the validity or amount of any mortgage or lien shown on the title search on his Unit within ten (10) days after same is mailed, postage prepaid, or delivered to the last known address of such Unit Lessee as shown on the books and records of the Association, then the Board is hereby authorized to pay all mortgages and liens shown on the title search in the priority shown on the title search to the extent the proceeds allocated to such Unit are sufficient. If written objection is timely filed with the Board by any Unit Lessee, then the Board shall hold that portion of the insurance proceeds which would otherwise have been paid to the holder of the mortgage or lien objected to, plus an amount equal to one (1) years' interest on such mortgage or lien, in escrow pending resolution of the dispute. The Board shall further be entitled to institute appropriate legal proceedings to determine the proper disposition of any such escrowed proceeds and, if such legal proceedings are instituted, the Board shall be entitled to recover its costs and reasonable attorneys' fees from the Unit Lessee or, if permitted by law, from the mortgage or lien holder.

## ARTICLE XVII

### DISTRIBUTION OF CONDEMNATION PROCEEDS



Section 17.1 Authority of Association: The Association shall have the authority to sue, settle and compromise with respect to any condemnation or eminent domain proceedings, or threat thereof, filed with respect to or affecting the Common Areas and Facilities and to employ and pay such attorneys, appraisers or other persons as the Board determines necessary or desirable in connection with any such legal proceedings or settlement negotiations.

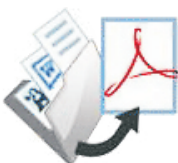
Section 17.2 Partial Condemnation: In the event of a partial condemnation or taking by eminent domain of the Common Areas and Facilities, the proceeds therefrom shall, after payment of all expenses of collection (including attorney fees and court costs), be used by the Association to restore and repair any damage caused to the Common Areas and Facilities. Should any partial condemnation proceeds remain, the Board shall have the discretion to either deposit such proceeds in the Working Capital Reserve or to distribute such partial condemnation proceeds in the same manner as required for the distribution of condemnation proceeds resulting from a total condemnation or taking as provided in Section 17.3 below.

Section 17.3 Total Condemnation: If the entire Common Areas and Facilities are condemned or taken by eminent domain then the Association shall, after payment of all expenses of collection (including attorney fees and court costs), distribute such total condemnation proceeds in the same manner as required for the distribution of casualty insurance proceeds pursuant to Section 16.2 of Article XVI.

#### ARTICLE. XVIII

##### DISTRIBUTION UPON EXPIRATION

Section 18.1 Upon expiration of the Master Ground Lease and the concurrent termination of this Declaration, the Association shall pay all lawful debts and obligations of the Association, including real estate taxes and special assessments, if any, then accrued against the Common Areas and Facilities, If any funds then remain (including, without limitation, all funds remaining in the Common Expense Fund, the Working Capital Reserve, the Replacement Reserve and the Ground Rent Reserve) the Association shall distribute any such remaining funds to each Unit in proportion to its Prorate Share of Common Expenses in the same manner and pursuant to the same procedures as required



for thy: distribution of casualty insurance proceeds pursuant to Section 16.2 of Article XVI.

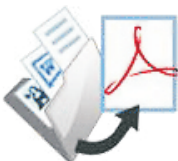
## ARTICLE XIX

### ARCHITECTURAL CONTROL COMMITTEE

Section 19.1 Appointment of Committee: The Architectural Control Committee shall consist of three (3) members. Initially, the three (3) members of the Architectural Control Committee shall be: Robert E. Towne, Bill E. Hooten and Raymond E. Stuhler. Until such time as the Developer has sold and transferred all Units owned by the Developer within the Property now or hereafter subject to this Declaration, the Developer shall have the absolute authority and discretion to appoint, remove and fill all vacancies on the Architectural Control Committee. After the Developer has sold and transferred all Units owned by the Developer within the Property now or hereafter subject to this Declaration, the Architectural Control Committee shall be appointed by the Board and the Board shall have the authority to remove and fill all vacancies on the Architectural Control Committee.

Section 19.2 Authority of Committee: The Architectural Control Committee shall not have the right, power or authority to approve, disapprove, regulate or otherwise restrict any construction, or the design thereof, by the Developer upon the Lots or the Common Areas and Facilities (herein "the Original Construction"). Except for the Original Construction by the Developer, no building, fence, wall or other structure or improvement or any landscaping shall be commenced, erected or maintained within the Common Areas on the Lot Restricted Areas, nor shall the exterior of any dwelling or related improvements upon the Lot Building Areas be changed, altered or modified from that of the Original Construction (including, without limitation, the use of a different color, the use of different building materials or other characteristics) by any person, including any Unit Lessee or the Association, without the prior approval of the Architectural Control Committee. All construction and modifications subject to approval by the Architectural Control Committee pursuant to this Section 19.2 and all other provisions of this Declaration are hereinafter called "Construction Changes".

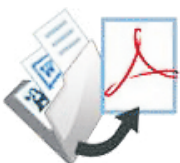
Section 19.3 Review Procedures: Any person (except Developer) desiring to make a Construction Change shall



first submit to the Architectural Control Committee appropriate plans and specifications showing the nature, kind, shape, height, materials and location of the proposed Construction Change. The Architectural Control Committee shall have sixty (60) days after submission of the plans and specifications with respect to the proposed Construction Change within which to approve or disapprove the Construction Change. If the Architectural Control Committee fails to act within such sixty (60) day period, the proposed Construction Change will be deemed approved. The Architectural Control Committee shall indicate its approval or disapproval by mailing written notice to the person requesting the Construction Change by registered or certified mail, postage prepaid, to the address provided by such person or, if none was provided, to such person's address as last shown by the records of the Association.

Section 19.4 Standard of Review: In approving or disapproving proposed Construction Changes, the Architectural Control Committee shall determine, in its sole discretion, whether the proposed Construction Change; (a) materially deviates from the architectural design and quality of construction of the Original Construction; (b) whether the proposed Construction Change is consistent with maintaining a harmony of external design and location in relation to the existing improvements, landscaping and topography throughout the Property as a whole or in relation to surrounding structures, landscaping and topography in the immediate vicinity of the proposed Construction Change; and (c) whether the proposed Construction Change interferes with or disrupts then existing improvements previously constructed within the Common Areas or the Lot Restricted Areas. The decision of a majority of the Architectural Control Committee shall be final and binding.

Section 19.5 Arbitration: In the event of any dispute concerning the validity, interpretation or enforceability of any provisions of this Article XIX or any decision of the Architectural Control Committee, the dispute will be submitted to binding arbitration before a three (3) member board of arbitration as permitted by the New Mexico Uniform Arbitration Act, Sections 44-7-1 through 44-7-22, inclusive, N.M.S.A. 1978 Comp., as now or hereafter amended. The method for selection of the board of arbitration shall be as follows: One (1) member shall be selected by the Architectural Control Committee, one (1)

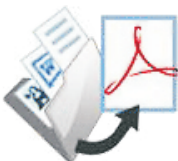


member shall be selected by a person requesting the Construction Change and the third impartial member shall be selected by the two (2) members so selected or, if they are unable to agree, by the Presiding Judge of the Second Judicial District Court for Bernalillo County, New Mexico. The party, which is unsuccessful in the arbitration proceeding shall pay all necessary and reasonable expenses of the arbitration, including the cost of a transcript of proceedings, if any, court reporter's fee, if any, and the fees and expenses of the members of the board of arbitration. The board of arbitration shall assess such arbitration expenses against the unsuccessful party.

## ARTICLE XX

### AMENDMENT TO DECLARATION

Section 20.1 Amendment by Declarants: Prior to the conversion of Phase I, the Developer and the Master Ground Lessor shall have the right to change, modify or amend this Declaration in any manner they desire, or to revoke and vacate this Declaration, by recording a Supplemental Declaration or appropriate instrument of revocation, in the Office of the County Clerk of Bernalillo County, New Mexico. After conversion of Phase I, all Unit Lessees within all Property now or hereafter subject to this Declaration, shall, by entering into their Unit Leases, be deemed to have granted Developer and Master Ground Lessor a power of attorney coupled with an interest to change, modify or amend this Declaration to the extent reasonably required by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Federal Housing Administration, or any private institutional lender in order to obtain project approval for the purpose of the origination and sale of mortgage loans to be secured by liens on the Units Within the Property; provided, however, that no such amendment shall be made if it materially and adversely affects the rights and obligations of any Unit Lessee under this Declaration or the By-Laws. The Board shall have the authority to determine whether any such amendment materially and adversely affects the rights and obligations of any Unit Lessee. Any such amendment shall be effected by the recordation of a Supplemental Declaration executed by Developer, Master Ground Lessor and the President of the Association.





Section 20.2 Amendment by Unit Lessees: After the conversion of Phase 1 and, except as otherwise permitted by Section 20.1 above, sixty-seven percent (67%) of the Unit Lessees voting in person or by proxy at a special meeting called pursuant to the By-Laws, shall have the right to amend this Declaration. Provided, however, that if the nature of any amendment is such that it requires the approval of Eligible Unit Mortgagees pursuant to Sections 15.2 or 15.3 of Article XV, the approval of fifty-one percent (51%), or in certain cases sixty-seven percent (67%), of the Eligible Unit Mortgagees shall be first obtained with respect to any such amendment. Provided, further, that no amendment may be made to this Declaration which attempts to change, modify or restrict any rights granted to the Developer, including, without limitation, the rights granted to the Developer by Articles IX and X of this Declaration. The President of the Association is authorized to execute and record a Supplemental Declaration setting forth any amendment made by the Unit Lessees pursuant to this Section.

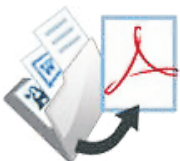
#### ARTICLE XXI

##### MISCELLANEOUS PROVISIONS

Section 21.1 Enforcement: The Association, the Developer, the Master Ground Lessor or any Unit Lessee shall have the right to enforce, by proceedings at law or in equity, all terms and provisions of this Declaration, the By-Laws and the Rules. Any failure to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

Section 21.2 Severability: The provisions of this Declaration, the By-Laws and Rules shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision, or portion hereof, shall not affect the validity or enforceability of any other provision.

Section 21.3 Covenants Running With Land: The rights and obligations of the Association, the Developer, Master Ground Lessor and Unit Lessees under this Declaration, the By-Laws and the Rules, including amendments thereto, shall be deemed to be covenants running with the Land until this Declaration terminates upon expiration of the Master Ground Lease and shall inure to the benefit of and be binding on



their respective heirs, executors, administrators, successors, legal representatives, assigns, purchasers, tenants, lessees, grantees and mortgagees and all other persons having or claiming any interest in the Property or any Unit thereof. Upon acceptance or recordation of any Unit Lease or any assignment, deed or other instrument conveying the leasehold interest in any Unit, the Unit Lessee shall be deemed to have accepted and agreed to and shall be bound by And subject to each and all of the provisions of this Declaration, the By-Laws and the Rules.

IN WITNESS WHEREOF, the Developer and the Master Ground Lessor have executed this Declaration the date first written above.

TOWNE PARK, INC.,

a Nevada corporation

