

ARTICLE V

Maintenance, Alterations, Taxes and Utilities

Section 5.1 Maintenance.

(a) Maintenance of Residences. All maintenance, repairs and replacements of, in or to any Residence, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of interior non-structural walls, doors within or affording access to a Residence, fixtures, outlets and floor coverings, and all Residential Systems exclusively serving such Residence, shall be performed by the Residence Owner in accordance with the Residential Maintenance Standard at the sole cost and expense of such Residence Owner. In addition, all instances of water damage within a Residence or sightings of mold within the Residential Condominium must be reported to the Residential Association in writing immediately and all Residences must be maintained at all times within a specific temperature range as more particularly set forth in the Residential Regulations.

(b) Maintenance of Residential Common Elements. Except as otherwise provided herein or in the Residential Regulations, all Residential Common Elements shall be maintained by the Residential Association in accordance with the Residential Maintenance Standard, the cost and expense of which shall constitute a Residential Common Expense. The Residential Association shall establish and maintain an adequate reserve fund for such purposes, to be funded by Monthly Residential Assessments rather than by Special Residential Assessments; provided, however, that the Residential Association may require Special Residential Assessments for such purposes in accordance with Section 7.2 of this Residential Declaration. Nothing in this Residential Declaration shall be deemed or construed as relieving any Residence Owner from liability or responsibility for damage to the Residential Common Elements caused by the negligence or misconduct of a Residence Owner or a Residence Owner's occupants or invitees.

(c) Limitation of Liability. The Residential Association shall not be liable: (i) for injury or damage to any person or property caused by the elements or by a Residence Owner or the occupant or Tenant of any Residence, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from or over any portion of the Residential Common Elements, or from any pipe, drain, conduit, appliance or equipment which the Residential Association is responsible to maintain under this Residential Declaration; (ii) to any Residence Owner or occupants or Tenants of any Residence for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Residential Common Elements or (iii) to any Residence Owner or occupant or Tenant of a Residence for any damage or injury caused in whole or in part by the failure of the Residential Association to discharge its respective responsibilities under this Section 5.1, as applicable.

Section 5.2 Failure of Residence Owner to Maintain Residence. If any Residence Owner fails or neglects to maintain, repair, or clean its Residence as required by Section 5.1(a) of this Residential Declaration and such failure or neglect continues for ten days after such Residence Owner's receipt of written notice of such neglect or failure from the Residential Association, then the Residential Association acting on its own behalf may, but shall not be obligated to, enter the Residence and take appropriate steps to perform, or cause to be performed, the maintenance, repair, cleaning and replacement in the manner as required by this Residential Declaration. The defaulting Residence Owner shall, upon demand, reimburse the Residential Association for all cost and expenses incurred in exercise of its rights in this Residential Declaration. Any Residential Charges for such costs and expenses not paid within ten days from the defaulting Residence Owner's receipt of demand from the Residential Association shall bear interest at the Past Due Rate.

Section 5.3 Additions, Alterations or Improvements by Residence Owner. Subject to the provisions in this Residential Declaration, no Residence Owner (other than Residential Declarant) shall: (i) make any addition, alteration or improvement in its Residence, to the extent either visible from any other Residence, the exterior of the Building, or any Residential Common Elements, whether structural or non-structural; (ii) change the floor plan and layout of such Residence Owner's Residence; or (iii) make any material changes to the configuration or size of any Residence, without the prior written approval of the Residential Association, in its sole and absolute discretion. However, in no event shall any such alteration, improvement or change interfere with any structural support of any Residence, the Residential Common Elements or any Residential System serving another Residence. All work done in accordance with this Section 5.3 shall be done in compliance with the plans approved by the Residential Association, all Residential Legal Requirements and the Residential Governing Documents. THE RESIDENCE OWNER, MAKING OR CAUSING TO BE MADE SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS, AGREES, AND SHALL BE DEEMED TO HAVE AGREED, FOR SUCH RESIDENCE OWNER, TO HOLD RESIDENTIAL DECLARANT, THE RESIDENTIAL ASSOCIATION, AND ALL OTHER RESIDENCE OWNERS HARMLESS FROM AND TO INDEMNIFY THEM FOR ANY LIABILITY OR DAMAGE TO THE PROPERTY RESULTING FROM SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS. ANY OTHER RESIDENCE OWNER SUBMITTING PLANS HEREUNDER, BY DISSEMINATION OF THE SAME, AND ANY RESIDENCE OWNER, BY ACQUIRING TITLE TO THE SAME, AGREES NOT TO SEEK DAMAGES FROM THE RESIDENTIAL ASSOCIATION, ARISING OUT OF THEIR REVIEW OF ANY PLANS HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE RESIDENTIAL ASSOCIATION SHALL NOT BE RESPONSIBLE FOR REVIEWING, NOR SHALL ITS REVIEW OF ANY PLANS BE DEEMED APPROVAL OF ANY PLANS FROM THE STANDPOINT OF THE STRUCTURAL SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODES OR INDUSTRY STANDARDS, OR COMPLIANCE WITH THE RESIDENTIAL GOVERNING DOCUMENTS AND ALL RESIDENTIAL LEGAL

REQUIREMENTS. FURTHER, EACH RESIDENCE OWNER AGREES TO INDEMNIFY AND HOLD THE RESIDENTIAL ASSOCIATION AND ITS RESPECTIVE OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, DAMAGES, EXPENSES OR LIABILITIES WHATSOEVER, ARISING AS A RESULT OF THE REVIEW OF ANY PLANS HEREUNDER.

Section 5.4 Mechanic's Liens Indemnification. No labor or services performed or materials furnished and incorporated in a Residence Owner's Residence or any Residential Common Element, shall be the basis for the filing of a lien against the Residence of any other Residence Owner not expressly consenting to or requesting the same or against the Residential Common Elements. EACH RESIDENCE OWNER (TO THE EXTENT ARISING THROUGH SUCH RESIDENCE OWNER) SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE OTHER RESIDENCE OWNERS AND THE RESIDENTIAL ASSOCIATION FROM AND AGAINST ALL LIABILITIES AND OBLIGATIONS ARISING FROM THE CLAIM OF ANY MECHANIC'S LIEN AGAINST THE RESIDENCE OF SUCH RESIDENCE OWNER, THE RESIDENCE OF SUCH OTHER RESIDENCE OWNERS AND/OR THE RESIDENTIAL COMMON ELEMENTS. All contracts for labor, services and/or materials with respect to any of the Residences shall be in compliance with the provisions hereof and all Residential Legal Requirements.

Section 5.5 Taxes.

(a) **Payment of Governmental Impositions.** Each Residence Owner shall be responsible for and shall pay when due all Residential Governmental Impositions lawfully levied or assessed with respect to its Residence, except to the extent such Residential Governmental Impositions are being actively and diligently contested in good faith by appropriate legal proceedings, and if requested by the Residential Association, have been bonded or reserved in an amount and manner satisfactory to the Residential Association. Any Residential Governmental Impositions lawfully levied or assessed with respect to the Residential Property not separately assessed to the Residence Owners shall constitute a Residential Common Expense and be payable by the Residential Association when due.

(b) **Notice to Taxing Authorities.** Residential Declarant shall give written notice to the appropriate taxing authorities of the creation of the Residential Condominium established pursuant to this Residential Declaration. Each Residence Owner shall promptly request and diligently pursue from the applicable taxing authority separate tax parcel status and a separate tax identification number for its Residence.

(c) **Residences Not Separately Assessed.** If any Residential Governmental Impositions with respect to the Residential Property are not separately assessed to the Residence Owners of a Residence, each Residence Owner shall pay its respective allocated portion of such Residential Governmental Impositions (which

allocations shall be determined in the manner set forth in this Residential Declaration) when requested by the Residential Association (but in no event prior to 20 days or later than ten days before the date of delinquency, without any additional notice of grace period) to permit the Residential Association to make full payment of such Residential Governmental Impositions prior to the date on which such Residential Governmental Impositions would become delinquent; provided that Residential Association shall not require any Residence Owner to make any payment to the Residential Association for such Residential Governmental Impositions to the extent such amounts have already been deposited by such Residence Owner in accordance with any escrow arrangement.

(d) Failure to Pay Residential Governmental Impositions. The Residential Association or any Residential Mortgagee may pay the portion of such Residential Governmental Impositions that any Residence Owner has failed to pay when due, and the Residential Association or such Residential Mortgagee shall have a lien against such Residence to secure repayment thereof that may be enforced by any means available at law or in equity, including non-judicial foreclosure sale of such Residence in accordance with Texas Property Code Section 51.002 (as now written or hereafter amended). Each Residence Owner, by its acquisition of such Residence, grants a power of sale in connection with such lien in favor of the Residential Governmental Impositions on behalf of a defaulting Residence Owner. Any lien pursuant to this Section 5.5(d) shall have the same priority as a lien by the Residential Association for Residential Assessments; provided that any such lien for delinquent Residential Governmental Impositions shall be subordinate to the lien of any Property Lien Indebtedness encumbering the defaulting Residence, provided that such Property Lien Indebtedness was recorded (notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records).

Section 5.6 Utilities. Each Residence Owner shall be responsible for and shall pay all charges for gas, electricity, water and other utilities relating to such services used or consumed at or with respect to the occupancy of its Residence, to the extent such charges are separately metered by the respective utility companies. Any utility charges not so separately metered and charges relating to such services used in connection with the use and maintenance of the Residential Common Elements, shall constitute a Residential Common Expense and be payable by the Residential Association.

ARTICLE VI

Insurance

Section 6.1 Requirements. All insurance coverage required to be obtained pursuant to Article VI of this Residential Declaration or purchased at the election of a Residence Owner or the Residential Association shall:

(a) be in such form, approved by the Residential Association and shall be issued by responsible insurance companies licensed to do business in the State of Texas and shall be rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A-/V" or better;

(b) not be brought into contribution with insurance purchased by other Residence Owners or the Residential Association;

(c) waive any right to claim (i) by way of subrogation against Residential Declarant, the Residential Association, the Residential Board or Directors, any Manager, the Residence Owners, Residential Tenants and their respective agents and employees and (ii) invalidity arising from the acts of the insured; and

(d) provide that insurance trust agreements shall be recognized.

Section 6.2 Insurance by Residential Association.

(a) Commencing upon the first conveyance of any Residence to a Residence Owner other than Residential Declarant, the Residential Association shall obtain and maintain as a Residential Common Expense (a) insurance coverage required pursuant to the Act and such other insurance coverage as set forth in the Residential Bylaws, including, but not limited to: (i) CGL, (ii) property insurance covering the full replacement value of the Improvements, (iii) workmen's compensation insurance to the extent necessary to comply with applicable law, and (iv) any other insurance deemed necessary by the Board of Directors of the Residential Association and (b) at the expense of the Residence Owner incurring such Priority Lien Indebtedness, such other insurance (or additional coverage) as such Residence Owners' Mortgagees shall require. In addition, each insurance policy maintained by the Residential Association shall provide that: (i) each Residence Owner is named as an insured under such policies with respect to liability arising out of the Residence Owner's ownership of an undivided interest in the Residential Common Elements or membership in the Residential Association, (ii) no action or omission by any Residence Owner, unless validly exercised on behalf of the Residential Association, will void the policy or be a condition to recovery under the policy, and (iii) such policy is primary insurance. If, at any time of a loss under the policy, any Residence Owner has other insurance covering the same property covered by such policy.

(b) The Residential Association shall carry such other or additional insurance in such amount and against such risks as the Residential Association shall reasonably deem necessary or appropriate with respect to the Residential Common Elements or operation of the Residential Association, including liability duty-to-defend insurance for all officers, directors, trustees and employees of the Residential Association. The premiums for all insurance coverages maintained by the Residential Association pursuant to this Section 6.2 shall constitute a Residential Common Expense and be payable by the Residential Association.

Section 6.3 Insurance by Residence Owners.

A Residence Owner shall be responsible for obtaining and maintaining at such Residence Owner's sole cost and expense property insurance covering its Residence and all alterations, additions, betterments, and improvements to its Residence and all other personal property located at its Residence or constituting a part thereof and insurance covering damage to other Residences and property located therein, the cause of which originates from such Residence Owner's Residence. Nothing in this Residential Declaration shall be deemed or construed as prohibiting a Residence Owner, at such Residence Owner's sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Residence Owner may deem necessary or appropriate.

Section 6.4 Other.

(a) The Residential Association shall not be liable for failure to obtain any insurance coverage required by this Residential Declaration or for any loss or damage resulting from such failure, if such failure is because such insurance coverage is not reasonably available.

(b) Neither the Residential Association nor any Residence Owner shall obtain any policy of insurance where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Residence Owner or a Residential Mortgagee or become a lien against the Residential Condominium; (ii) by the terms of the carrier's charter, bylaws, policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Residential Association, Residence Owners or Residential Mortgagees from collecting Residential Insurance Proceeds.

Section 6.5 Residential Insurance Trustee.

By acceptance of a deed to a Residence, each Residence Owner shall be deemed to have irrevocably appointed the Residential Association as the Residential Insurance Trustee. All property insurance policies required to be obtained by the Residential Association as described in this Article VI shall be issued in the name of the Residential Association as Residential Insurance Trustee for the Residential Condominium. Loss payable provisions shall be in favor of the Residential Insurance Trustee as a trustee for the Residential Association, each Residence Owner and each Residential Mortgagee. The Residential Insurance Trustee shall not be liable for the payment of premiums, nor the renewal or sufficiency of policies, except those policies required to be purchased and maintained by the Residential Association pursuant to this Article VI. The duty of the Residential Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated in this Article VI and in Article VIII below, and for the benefit of each Residence Owner, including Residential Declarant, and each Residential Mortgagee.

ARTICLE VII

Residential Assessments

Section 7.1 Monthly Residential Assessments by Residential Association.

The Residential Association shall possess the right, power, authority and obligation to establish a regular Monthly Residential Assessment for payment of Residential Common Expenses, to promote the health, safety, and welfare of the Residential Owners and/or their Tenants in the Residential Condominium, and for the improvement, security, preservation, operation and maintenance of the Residential Common Elements.

(a) **Residential Common Expenses.** The Residential Association shall possess the right, power, authority and obligation to establish a regular Monthly Residential Assessment sufficient in the judgment of the Residential Association to pay all Residential Common Expenses when due and to maintain an adequate reserve fund for such purposes. Such Monthly Residential Assessments so established shall be payable by all Residence Owners on the first day of each calendar month, and shall be applied to the payment of Residential Common Expenses for which the Residential Association is responsible, including maintenance, repair and care of the Residential Common Elements.

(b) **Budget for Common Expense.** Prior to the commencement of each fiscal year of the Residential Association, the Residential Association shall deliver to the Residence Owners a Residential Budget, incorporating the Residential Common Expenses. Such Residential Budget shall be in sufficient detail so as to inform each Residence Owner of the nature and extent of the Residential Common Expenses anticipated to be incurred in the upcoming fiscal year, and shall be accompanied by a statement setting forth each Residence Owner's monthly share thereof, which shall be determined in accordance with such Residence Owner's Residential Allocated Interests, and the date as of which such Monthly Residential Assessment commences to be payable. No further communication shall be necessary to establish the amount of each Residence Owner's obligation regarding the Monthly Residential Assessment payable hereunder and the failure of the Residential Association to timely deliver the Residential Budget shall in no event excuse or relieve a Residence Owner from the payment of the Monthly Residential Assessments contemplated hereby, in which case, each Residence Owner shall continue to pay to the Residential Association an amount equal to such Residence Owner's Monthly Residential Assessment as established pursuant to the most recent Residential Budget delivered to the Residence Owners. If the proposed Residential Budget for a fiscal year increases more than 30% above the Residential Budget for the preceding fiscal year, such Residential Budget must be approved by the affirmative vote of the Residence Owners holding not less than 67% of the votes in the Residential Association. Any Residential Budget prepared and

delivered to the Residence Owners as contemplated in this Article VII may be amended as and to the extent reasonably necessary, and the amount of the Residence Owner's Monthly Residential Assessment changed to correspond therewith.

Section 7.2 Special Residential Assessments. In addition to the Monthly Residential Assessments contemplated by Section 7.1 of this Residential Declaration, the Residential Association shall possess the right, power, authority and obligation to establish Special Residential Assessments from time to time as may be necessary or appropriate in the judgment of the Residential Association to pay operating deficits and other non-recurring Residential Common Expenses relating to the maintenance, care, alteration, improvement, replacement, operation and management of the Residential Condominium and the administration of the Residential Association.

Section 7.3 Individual Assessments. In addition to Monthly Residential Assessments and Special Residential Assessments contemplated in Section 7.1 and Section 7.2 of this Residential Declaration, the Residential Association shall possess the right, power and authority to establish or levy Individual Assessments in accordance with the provisions of this Residential Declaration against individual Residence Owners or a Residence Owner's Residence for charges properly borne solely by one or more but less than all Residence Owners, such as (without limitation) charges for additional services, damages, fines or fees, or insurance deductible payments. Individual Assessments shall be the personal obligation of the Residence Owner against whom the Individual Assessment is assessed, and shall constitute a lien against the Residence in the same manner and with the same consequence as the Monthly Residential Assessment and any duly authorized Special Residential Assessment.

Section 7.4 Obligation to Pay Residential Assessments. Each Residence Owner shall be personally obligated to pay such Residence Owner's share of all Residential Assessments duly established pursuant to this Residential Declaration to the Residential Association. Unpaid Residential Assessments due as of the date of the conveyance or transfer of a Residence shall not constitute a personal obligation of the new Residence Owner (other than such new Residence Owner's pro rata share of any reallocation thereof); however, the former Residence Owner shall continue to be personally liable for such unpaid Residential Assessment. No Residence Owner shall be entitled to exemption from liability for the Residence Owner's obligation to pay such Residential Assessments by waiver of the use and enjoyment of the Residential Common Elements, by an abandonment of its Residence or by any other action or otherwise. Any Residential Assessment not paid within five days of the date due shall bear interest at the Past Due Rate, and may be recoverable by the Residential Association, together with interest as aforesaid and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the County. It shall be the responsibility of the Residential Association to collect any such delinquent Residential Assessment, the existence of which shall be made known by written notice delivered to the defaulting

Residence Owner and, shall give written notice of any 60 day delinquency in the payment of Residential Assessments by a Residence Owner to such Residence Owner's Residential Mortgagee to the extent the Residential Mortgagee has requested such notices be provided.

Section 7.5 Lien to Secure Payment of Residential Assessments.

Residential Declarant hereby reserves and assigns to the Residential Association a lien, pursuant to the provisions of the Act, against each Residence, the Residential Rents, if subsequently created upon such Residences, Residential Rents and Residential Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of Priority Lien Indebtedness (provided such lien was recorded prior to the date on which the Residential Assessment became delinquent) and the liens for Residential Governmental Impositions. The liens and encumbrances created in this Residential Declaration may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Residence of a defaulting Residence Owner; such sale to be conducted in the manner set forth in Texas Property Code Section 51.002 (as now written or as hereafter amended). Each Residence Owner, by acquisition of its Residence, grants to the Residential Association a power of sale in connection with the Residential Association's liens. By written resolution, the Residential Association may appoint, from time to time, an officer, agent, trustee or attorney of the Residential Association to exercise the power of sale on behalf of the Residential Association. The Residential Association may bid for and purchase the Residence, as a Residential Common Expense, at any such foreclosure sale. The foreclosure of lien encumbering a Residence in order to satisfy the Priority Lien Indebtedness will extinguish the subordinate lien for any Residential Assessments which became payable prior to the date of such foreclosure sale, provided that in no event shall a defaulting Residence Owner be relieved from liability incurred for past Residential Assessments.

Section 7.6 Commencement of Obligation to Pay Residential Assessments.

Each Residence Owner, other than Residential Declarant, shall be obligated to commence payment of all Residential Assessments against its Residence on the date the Residence is conveyed to the Residence Owner. If such date is other than the first day of a month, then such Residence Owner shall be obligated to pay only a pro rata share of the Residential Assessment against its Residence based on the number of days during such month that the Residence Owner will hold title to its Residence. If a Residential Tenant occupies a Residence and the Residence Owner of that Residence becomes delinquent in the payment of any Residential Assessment against such Residence, the Residential Association shall have the right, upon written notice to the Residential Tenant and Residence Owner, to collect any rental payments due from the Residential Tenant until the full amount of the Residential Assessment plus any applicable late fees, fines or attorney's fees is collected. Prior to the commencement of the obligation to pay the initial Monthly Residential Assessment, Residential Declarant shall pay all Residential Common Expenses of the Residential Condominium (excluding portions thereof allocable to reserves and less Residential Assessments paid by other Residence Owners); provided, however, nothing contained

in this Residential Declaration shall prevent Residential Declarant from collecting from the purchaser of a Residence at closing any expenses, such as Residential Governmental Impositions, attorney's fees or insurance premiums, to the extent that Residential Declarant prepaid such expenses on behalf of the Residence being purchased. After commencement of the initial Monthly Residential Assessment and prior to the end of Residential Declarant Control Period, Residential Declarant shall pay the amount by which the Residential Common Expenses of the Residential Condominium (excluding the portion thereof allocable to reserves) exceed Monthly Residential Assessments required to be paid by Residence Owners other than Residential Declarant; thereafter, Residential Declarant shall pay Monthly Residential Assessments the same as any other Residence Owner. If such date is other than the first day of a month, then Residential Declarant shall be obligated to pay only a pro rata share of the Residential Assessments against such Residence based on the number of days remaining during such month.

Section 7.7 Redemption by Residence Owner. The Residence Owner of a Residence purchased by the Residential Association at a foreclosure sale of a Residential Association's lien for Residential Assessments may redeem the Residence in accordance with the provisions of the Act.

Section 7.8 Notice of Default. If a Residence Owner defaults in its monetary obligations to the Residential Association, the Residential Association may notify other lienholders of the default and the Residential Association's intent to foreclose its lien. The Residential Association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a Residence which has given the Residential Association a written request for notification of the Residence Owner's monetary default or the Residential Association's intent to foreclose its lien.

Section 7.9 Alternative Actions. Nothing contained in this Residential Declaration shall prohibit the Residential Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

Section 7.10 Statement of Expenses and Access to Records. Upon request, the Residential Association shall promptly provide any Residence Owner, contract purchaser or Mortgagee with a written statement of all unpaid Assessments due with respect to such Residence. The Residential Association may impose a reasonable charge for the preparation of such statement to the extent permitted by the Act. The Residential Association shall make available during normal business hours for inspection, upon request by the Residence Owners, Mortgagees, Tenants, prospective purchasers and any of their authorized agents, current copies of the books, records and financial statements of the Residential Association.

ARTICLE VIII

Loss and Obsolescence

Section 8.1 Loss or Damage. The following provisions shall govern if the Residential Condominium or any part thereof is damaged or destroyed by fire or other casualty, except with respect to the Residential Common Elements, which shall be governed by this Article VIII:

(a) prompt written notice of any substantial damage or destruction shall be given by the Residence Owner of the Damaged Residence to the Residential Association and the Residential Mortgagee of the Damaged Residence;

(b) the Residence Owner of the Damaged Residence shall promptly proceed with the full restoration and repair of such damage or destruction unless: (i) the Residential Condominium is terminated; (ii) repair or replacement would be illegal under any Residential Legal Requirement or (iii) the Residence Owners holding at least 80% of the votes in the Residential Association, including the Owner of the Damaged Residence, vote not to rebuild and

(c) except as otherwise provided in Section 8.4 of this Residential Declaration, the Owner of each Damaged Residence shall pay all costs of such restoration, repair and replacement or rebuilding in excess of the net proceeds of the collectible Insurance Proceeds.

Section 8.2 Loss or Damage to Residential Common Elements.

The following provisions shall govern if the Residential Common Elements or any part thereof, are damaged or destroyed by fire or other casualty:

(a) prompt written notice of any substantial damage or destruction shall be given to the Residential Association, all the Residential Mortgagees and the Residence Owners;

(b) the Residential Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Residential Condominium is terminated; (ii) repair or replacement would be illegal under any Residential Legal Requirement; or (iii) at least 80% of the votes in the Residential Association, including each Residence Owner of a Residence to which a Residential Limited Common Element that will not be rebuilt or repaired is assigned, vote not to be rebuilt;

(c) the amount by which such restoration and repair costs exceed collectible Residential Insurance Proceeds shall be and constitute a Special Residential Assessment payable by the Residence Owners within 60 days of the date notice of such Special Residential Assessment is delivered by the Residential Association, in accordance with Section 7.2 of this Residential Declaration;

(d) any excess Residential Insurance Proceeds remaining after such restoration and repair, or any insurance sales proceeds available absent such restoration and repair, shall be received and held in trust by the Residential Insurance Trustee in separate accounts for each Residence Owner, as their interests may appear (with any proceeds attributable to Residential Limited Common Elements allocated among the Residence Owners of the Residences to which such Residential Limited Common Elements were assigned in this Residential Declaration and any other proceeds allocated in accordance with the Residential Allocated Interests of the Residence Owners), and distributed as follows: (i) first, to the payment of any Residential Governmental Impositions in favor of any assessing entity having authority with respect to the Residential Common Elements or such Residence; (ii) second, to the payment of the balance of the Priority Lien Indebtedness of such Residence Owner; (iii) third, to the payment of any delinquent Residential Assessment with respect to such Residence and (iv) the balance, if any, to each Residence Owner entitled thereto.

Section 8.3 Residential Association as Attorney-in-Fact. Each Residence Owner, by acceptance of a deed to a Residence, hereby irrevocably makes, constitutes and appoints the Residential Association, and each and every one of its successors in interest hereunder (which appointment shall be deemed a power coupled with an interest), as Residence Owner's true and lawful attorney-in-fact, for and in such Residence Owner's name, place and stead, upon the damage or destruction of the Residential Condominium, or any part thereof, or upon any determination by the Residence Owners made pursuant to this Article VIII, to take any and all actions, and to execute and deliver any and all instruments, as the Residential Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article VIII, hereby giving and granting unto the Residential Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes as a Residence Owner might or could do, hereby ratifying and confirming whatsoever the Residential Association may do by virtue hereof. The Residential Association is hereby authorized, in the name and on behalf of all Residence Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article VIII as aforesaid, including the power and authority to make and settle claims under any insurance policies maintained by the Residential Association, and to execute and deliver all instruments necessary or incidental to any such actions.

Section 8.4 Matters Relating to Restoration and Repairs. Any restoration and repair work undertaken by the Residential Association or a Residence Owner pursuant to this Article VIII shall be performed in a good and workmanlike manner in order to restore the Improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Residential Association be responsible for restoring, repairing or replacing any improvements to a Residence made by a Residence Owner, or the contents located in such Residence. All such restoration and repair work, whether done by the

Residential Association or a Residence Owner, shall be effected in a manner so as to observe all vertical and horizontal Residence boundaries existing prior to such damage or destruction. If a Residence Owner or the Owners decide to rebuild or repair any Residence in excess of its full replacement cost, such Residence Owner or Owners shall be responsible for any such costs exceeding the full replacement value of such Residence; provided, however, that if the Residential Owners holding not less than 67% of the Residential Allocated Interests shall vote to incur such expenses, such additional expenses, to the extent they exceed the replacement value of such Residence, shall constitute a Special Residential Assessment.

Section 8.5 Obsolescence of Common Elements. If the Residential Owners holding not less than 100% of the Residential Allocated Interest shall vote, at a meeting of the Residential Association duly called for purposes of considering same, that the Residential Common Elements, or any part thereof, (or any Systems which serve only, or are a part of, individual Residences) are obsolete, the Residential Association shall promptly proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purchase, and the cost thereof shall be and constitute a Special Residential Assessment payable by all the Residence Owners within 30 days of the date notice of such Special Residential Assessment is delivered to them by the Residential Association.

ARTICLE IX

Condemnation

Section 9.1 General Provisions. If all or any part of the Residential Property is subject to a Taking, the Residential Association and each Residence Owner affected thereby shall be entitled to participate in proceedings incident thereto at their respective expense. The Residential Association shall give such notice as it receives of such proceeding to all the Residence Owners and to all the Residential Mortgagees which have requested such notice; provided, however, that the failure of the Residential Association to give such notice shall not prejudice the right of any Residential Mortgagee to participate in such proceedings. The expense of participation in such proceedings by the Residential Association shall be a Residential Common Expense. The Residential Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Residential Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. Any restoration or repair of the Residential Property following a partial Taking shall be performed in accordance with the provisions of this Residential Declaration and shall follow, as nearly as possible, the original plans and specifications for the Residential Property, unless otherwise approved by all the Residential Mortgagees.

Section 9.2 Taking of All or Substantially All of One Residence. If a Residence (or a substantial part thereof such that the remnant may not practically or

lawfully be used for any purpose permitted by this Residential Declaration) is subject to a Taking, the Residence Owner and any Residential Mortgagee of such Residence Owner shall be entitled to the award for such a Taking, including the award for the value of such Residence Owner's interest in the Residential Common Elements, whether or not such Residential Common Element interest is acquired, and after payment thereof, such Residence Owner and any Residential Mortgagee of such Residence Owner shall be divested of all interest in the Residential Property. In such event, the condemned Residence's entire Residential Allocated Interest shall be automatically reallocated to the remaining Residences in proportion to the respective Residential Allocated Interests of those Residences before the Taking, unless the decree relating to the subject of a Taking described in this Section 9.2 shall be a Residential Common Element. If any repair or rebuilding of the remaining portions of the Residential Property is required as a result of such Taking, the Residential Owners holding not less than 80% of the votes in the Residential Association either to rebuild or repair the Residential Property or to take such other action as such remaining Residence Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Residential Property shall be resurveyed, if necessary, and this Residential Declaration shall be amended to reflect such Taking. This Residential Declaration shall in all circumstances be amended to reflect the re-allocated Residential Allocated Interests following the Taking.

Section 9.3 Partial Taking of a Residence. If only a portion of a Residence is subject to a Taking, such that the remaining portion of such Residence can practically and lawfully be used for any purpose permitted by this Residential Declaration, the Residence Owner shall be entitled to the award for such Taking, including the award for the value of such Residence Owner's interest in the Residential Common Elements, whether or not such Residential Common Element interest is acquired, and the Residential Allocated Interest of the Residence subject to such Taking shall be reduced and the Residential Allocated Interests of the other Residences shall be increased in accordance with the Reallocation Percentage. The Residence Owner of such Residence, at its sole cost and expense, shall promptly repair, restore and rebuild the remaining portions of such Residence as nearly as possible to the condition which existed prior to such Taking.

Section 9.4 Taking of Residential Common Elements. If an action is brought to effect a Taking of all or any portion of the Residential Common Elements together with or apart from any Residence, the Residential Board of Directors, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Residential Common Elements in which case such decision shall be made by the affirmative vote or written consent of the Residence Owners holding not less than 80% of the votes in the Residential Association. With respect to any such Taking of the Residential Common Elements only, all damages and awards shall be determined for such Taking as a

whole and not for any Residence Owner's interest therein. After the damages or awards for a Taking of the Residential Common Elements are determined, such damages or awards shall be held by the Residential Association, acting as trustee for each Residence Owner, and their Residential Mortgagees, as their interests shall appear, and any amounts not used for repair or restoration of the remaining Residential Common Elements shall be divided among the Residence Owners in proportion to each Residence Owner's Residential Allocated Interest before the Taking, except that such portion of any such award attributable to the condemnation of a Residential Limited Common Element shall be divided among the Residence Owners of the Residences served by such Residential Limited Common Elements, as such Residence Owners' interests existed in the Residential Limited Common Elements condemned. The Residence Owners shall determine by the affirmative vote written consent of the Residence Owners holding not less than 80% of the votes in the Residential Association either to rebuild or repair the remaining Residential Common Elements or to take such other action as such Residence Owners may deem appropriate. If it is determined that such Residential Common Elements should be replaced or restored by obtaining other land or building additional structures, this Residential Declaration and the Residential Map attached hereto shall be duly amended by instrument executed by the Residential Board of Directors on behalf of the Residence Owners and recorded in the Condominium Records.

Section 9.5 Taking of Several Residences. If an eminent domain proceeding results in the Taking of all or part of multiple Residences, then the damage and awards for such Taking shall be determined and paid for each Residence as described in Section and 9.3 above, and the following shall apply:

(a) the Residential Association shall determine which of the Residences damaged by such Taking may be practically and lawfully used for any purpose permitted by this Residential Declaration, taking into account the nature of the Residential Property and the reduced size of each Residence so damaged;

(b) if the remaining Residential Owners shall determine by the affirmative vote or written consent of the remaining Residential Owners holding not less than 80% of the votes in the Residential Association, with the written consent of 51% of the Residential Mortgagees, that it is not reasonably practicable to operate the undamaged Residences and the damaged Residences which can be practically and lawfully used for any purpose permitted by the Residential Declaration, then the Residential Property as a condominium in the manner provided in this Residential Declaration, then the Residential Property shall be deemed to be regrouped and merged in a single estate owned jointly in undivided interests by all the remaining Residential Owners, as tenants-in-common, in the percentage of the Residential Allocated Interest of each Residential Owner (after reallocation in accordance with the procedures described in Section 9.2 and 9.3 above); and

(c) if the Condominium is not so terminated, then the damages and awards made with respect to each Residence which can be practically and lawfully used for any purpose permitted by this Residential Declaration shall be applied to repair and reconstruct such Residence as provided in Section 9.3. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rata against the Residential Owners of those Residences which are being repaired or

reconstructed. With respect to those Residences which may not be practically or lawfully used for any purpose permitted by this Residential Declaration, after payment of the award, such Residential Owner and any Residential Mortgagee of such Residential Owner shall be divested of all interest in the Residential Property and the condemned Residence's entire Residential Allocated Interest shall be automatically reallocated to the remaining Residences in proportion to the respective Residential Allocated Interests of those Residences before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Residence remaining after part of a Residence is the subject of a Taking, if the remnant of such Unit cannot be practically or lawfully used for any purpose permitted by this Residential Declaration, shall be a Common Element. If any repair or rebuilding of the remaining portions of the Residential Property (other than Residences which can be practically and lawfully used for any purpose permitted by this Residential Declaration) is required as a result of such Taking, the remaining Residential Owners shall determine by the affirmative vote or written consent of the remaining Residential Owners holding not less than 80% of the votes in the Residential Association either to rebuild or repair the Residential Property or to take such other action as such remaining Residential Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Residential Property shall be resurveyed, if necessary, and this Residential Declaration shall be amended to reflect such Taking. This Residential Declaration shall in all circumstances be amended to reflect the reallocated Residential Allocated Interests following the Taking.

Section 9.6 Complete Taking of Property. If all of the Residential Property is the subject of a Taking, all damages and awards shall be held by the Residential Association, acting as trustee, for the accounts of all the Residential Owners and their Residential Mortgagees, as their interests shall appear, and shall be paid to or for the accounts of the Residential Owners in proportion to their Residential Allocated Interests and this Condominium shall terminate upon such payment.

Section 9.7 Residential Association as Attorney-in-Fact. Each Residence Owner, by acceptance of a deed to a Residence, hereby irrevocably makes, constitutes and appoints the Residential Association, and each and every one of its successors in interest hereunder (which appointment shall be deemed a power coupled with an interest), as Residence Owner's true and lawful attorney-in-fact, for and in such Residence Owners name, place and stead, upon the condemnation of the Residential Condominium, or any part thereof, or upon any determination by the Residence Owners pursuant to this Article IX to take any and all actions, and to execute and deliver any and all instruments, as the Residential Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purpose of this Article IX, hereby giving and granting unto the Residential Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as a Residence Owner might or could do, hereby

ratifying and confirming whatsoever the Residential Association may do by virtue hereof. The Residential Association is hereby authorized, in the name and on behalf of all Residence Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article IX as aforesaid, and to execute and deliver all instruments necessary or incidental to any such actions.

ARTICLE X

Development Period: Working Capital Contributions

Section 10.1 Initial Directors. The initial Directors shall be those Directors named in the Residential Certificate of Formation.

Section 10.2 Period of Residential Declarant Control.

(a) Except as is provided below, Residential Declarant shall have the right to appoint and remove members of the Residential Board of Directors during the period of Residential Declarant Control. If Residential Declarant voluntarily surrenders the right to appoint and remove members of the Residential Board of Directors prior to the termination of the period of Residential Declarant Control, Residential Declarant may require that specified actions of the Residential Board of Directors be subject to Residential Declarant approval until the expiration of the period of Residential Declarant Control.

(b) Not later than 60 days after Residential Declarant has conveyed to Residence Owners other than Residential Declarant title to 25% of the Residences, the Residential Board of Directors shall appoint two advisory directors who shall be Residence Owners (other than Residential Declarant or its employees) each of whom must reside in their Residences, as their primary residence at least six months of each calendar year. Such advisory directors may attend all meetings of the Residential Board of Directors (but shall not be permitted to vote) and shall perform such duties and shall assume such obligations as may be delegated to them by the Residential Board of Directors.

(c) Not later than 120 days after Residential Declarant has conveyed to Residence Owners other than Residential Declarant title to 50% of the Residences, an election shall be held by the Residential Association, pursuant to the Residential Bylaws, for the election of not less than one-third of the members of the Residential Board of Directors by Residence Owners other than Residential Declarant. The term of the advisory directors shall expire at the meeting at which such newly elected members of the Residential Board of Directors take office.

(d) At least 20 days prior to termination of the period of Residential Declarant Control, the Residential Association shall elect a board of at least three Residential Directors pursuant to the Residential Bylaws, of which one will be elected for a three

year term, one will be elected for a two year term and one will be elected for a one year term, such terms to commence as of the date on which the period of Residential Declarant Control terminates.

Section 10.3 Working Capital Contributions.

(a) Each Residence Owner shall, at the time such Residence Owner purchases a Residence from Residential Declarant, contribute an amount to the Residential Association equal to the Residential Working Capital Contribution. Such amount shall be a contribution of working capital to the Residential Association and shall not be considered as an advance payment of the Monthly Residential Assessments. Residential Declarant shall not be required to make any Residential Working Capital Contribution.

(b) Any purchaser of a Residence from a Residence Owner other than Residential Declarant shall contribute an amount to the Residential Association equal to the Residential Working Capital Contribution at the time of purchase. Such an amount shall be a contribution of working capital to the Residential Association and shall not be considered as an advance payment of the Monthly Residential Assessments.

ARTICLE XI

Matters for Mediation and Arbitration

Section 11.1 Mediation. All Residential Disputes except those relating to equitable remedies, which shall not be resolved within 15 days after same have arisen (unless such greater time is provided elsewhere in the Residential Governing Documents) shall be submitted for, or determined by non-binding mediation. Mediation of any Residential Dispute shall be initiated by any Residence Owner making a written demand therefore to the other Residence Owner or Residence Owners involved in such Residential Dispute and the Residential Association, provided however, if the Residential Association is a party to any such Residential Dispute the Residential Association shall have the right to elect not to be governed by the provisions of this Article XI by giving to the Residence Owner or Residence Owners, within ten days after the Residential Association's receipt from such Residence Owner or Residence Owners of a demand for mediation of a Residential Dispute, written notice of the Residential Association's election not to be governed by the provisions of this Article XI and to instead exercise the Residential Association's remedies at law or in equity. With respect to such mediation, the parties shall, within ten days after delivery of such written notice to the Residential Association, appoint a mediator who is: (i) a reputable person actively engaged in the commercial real estate industry for a continuous period of not less than ten years and (ii) is in no way affiliated, or has had material business dealings with any

Residence Owner or any member of the Residential Association. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the then presiding judge of the United States District Court of the McAllen Division of the Southern District of Texas or such other service as may be recommended by the Hidalgo County Bar Association. Such mediation shall occur within 30 days after the mediator has been appointed and shall occur at a mutually acceptable location in Hidalgo County, Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorney's fees), provided, however, that if the Residential Dispute is not resolved pursuant to such mediation, the provisions of Section of this Residential Declaration shall govern the payment of attorneys fees and costs and expenses of mediation and arbitration under this Article XI.

Section 11.2 Final Offer Arbitration. If the parties are unable to resolve any Residential Dispute at mediation, no later than 30 calendar days after the parties have reached an impasse at mediation, the parties shall submit their Residential Dispute to binding arbitration. The parties agree to select a single impartial arbitrator from a list taken from the American Arbitration Association of commercial arbitrators, and if they cannot agree on an arbitrator, each party shall select a person and those two so selected shall then select the single impartial arbitrator who shall thereafter serve as arbitrator. The issues in dispute shall be submitted as "baseball" or final-offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current Rules for Commercial Mediation and Arbitration promulgated by the American Arbitration Association shall apply. Any award that is rendered by the arbitrator shall be accomplished no later than ten days from the initiation of the arbitration procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys fees, costs and expenses (included in connection with the mediation and arbitration of a Residential Dispute under this Article XI) of the party whose position is selected or awarded for the arbitration of the Residential Dispute under this Article XI.

Section 11.3 Exclusive Remedy. With respect to any Residential Dispute subject to arbitration under this Article XI, it is agreed that the arbitration provisions of this Article XI shall be the sole remedy of the Residence Owners involved in such Residential Dispute. Notwithstanding any other provisions of this Residential Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy, or matter that does not constitute a "Residential Dispute" as such term is defined in this Residential Declaration or not described in this Residential Declaration or with any

Person not named or described in this Residential Declaration, provided that any arbitration proceeding initiated under the terms of this Section 11.3 may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Residential Dispute and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the Residence Owners involved in the Residential Dispute and such Residential Owners' Residential Mortgagees and non-appealable judgment thereon may be entered by any court having jurisdiction.

ARTICLE XII

Miscellaneous

Section 12.1 Sound Transmission Disclaimer. EACH RESIDENT OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF THEIR RESIDENCE, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A BUILDING SUCH AS THE RESIDENTIAL TOWER IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY RESIDENCES AND THE SURROUNDING DEVELOPMENT AND/OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN RESIDENCES. RESIDENTIAL DECLARANT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG RESIDENCES AND THE OTHER PORTIONS OF THE PROPERTY, AND EACH RESIDENCE OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW AS OF THE DATE OF THIS RESIDENTIAL DECLARATION, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND OR IMPACT NOISE TRANSMISSION.

Section 12.2 Revocation or Termination of Residential Declaration. This Residential Declaration may be revoked or the Residential Condominium established hereby may be terminated, but only by an instrument in writing, duly approved, executed and acknowledged by those Residence Owners holding not less than 100% of the votes in the Residential Association, with the written consent of not less than one hundred 100% of the Residential Mortgagees. Any such instrument of revocation or termination shall be duly filed of record in the County. If the Residential Property is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of the Act.

Section 12.3 Amendment to Residential Declaration. This Residential Declaration may be amended at a meeting of the Residence Owners at which the amendment is approved by those Residence Owners holding not less than 67% of the votes in the Residential Association with the written consent of not less than 51 % of the Residential Mortgagees. Such amendment shall be evidenced by a written instrument executed and acknowledged by an officer of the Residential Association on behalf of the consenting Residence Owners and by the consenting Residential

Mortgagees and filed of record in the County. Any such amendment so effected shall be binding upon all of the Residence Owners; provided, however, that except as permitted or required by the Act, no such amendment shall (a) cause the alteration or destruction of all or part of any Residence unless such amendment has been consented to by the Residence Owner and the Residential Mortgagees of the Residence which is to be altered or destroyed, (b) create or increase Special Residential Declarant Rights, (c) increase the number of Residences, (d) change the boundaries of a Residence or (e) change the use restrictions on a Residence unless, with respect to the matters described in subsections (b), (c), (d) and (e) of this Section above, such amendment has been consented to by 100% of the votes in the Residential Association or is otherwise authorized by this Residential Declaration. No such amendment shall become effective unless approved by Residential Declarant if Residential Declarant still owns one or more Residences and the amendment would, in Residential Declarant's reasonable determination (i) increase or otherwise modify Residential Declarant's obligations; (ii) reduce or modify any Special Residential Declarant Rights; or (iii) materially inhibit or delay Residential Declarant's ability to complete the Improvements or to convey any portion of the Residential Property owned by Residential Declarant. Residential Declarant, if Residential Declarant owns a Residence which has never been occupied, or the Residential Association may, without a vote of the Residence Owners or approval by the Residential Mortgagees or the Residential Association amend the Residential Declaration or the Residential Bylaws in any manner necessary to meet the requirement of the Federal National Mortgage Association, the Federal National Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

Section 12.4 Partial Invalidity. If any provision of the Residential Governing Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall in no way impair or affect the validity or enforceability of the remainder of such Instruments.

Section 12.5 Conflicts. If any of the provisions of the Residential Governing Documents shall be in conflict with the provisions of the Act or the Texas Non-Profit Corporation Act or the Texas Business Corporation Act, the provisions of such statutes shall control. If a conflict exists between the provisions of the other Residential Governing Documents, the Residential Governing Documents shall control in the following order:

- a. the Residential Declaration;
- b. the Residential Certificate of Formation;
- c. the Residential Bylaws; and
- d. the Residential Regulations.

Each Residence Owner acknowledges that it has been given the opportunity to review the documents listed above in Section 12.5(a) through (d) of this Residential Declaration and Residence. The provisions of Residential Governing Documents embody the entire final documentation to which the Residences and any Residence

Owners will be subject in relation to the Residential Condominium and supersede any and all agreements, representations, and understandings, whether written or oral, between the Residential Declarant and the Residence Owner.

Section 12.6 Captions and Exhibits. Captions used in the various articles and sections of this Residential Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof. All exhibits are incorporated and made a part of this Residential Declaration.

Section 12.7 Usury. It is expressly stipulated and agreed to be the intent of the Residential Declarant that at all times the terms of this Residential Declaration, the Residential Bylaws or the Residential Regulations shall comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable under any provision of this Residential Declaration, the Residential Bylaws, or the Residential Regulations. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received pursuant to this Residential Declaration, the Residential Bylaws, the Residential Regulations or any other communication or writing by or between the Residential Declarant, the Residential Association and the Residence Owners related to the matters set forth in this Residential Declaration, the Residential Bylaws, or the Residential Regulations, then it is the express intent of the Residential Declarant that all amounts charged in excess of the maximum rate allowed by Texas law shall be automatically canceled, *ab initio*, and all amounts in excess of the maximum rate allowed by Texas law theretofore collected shall be refunded, and the provisions of this Residential Declaration, the Residential Bylaws, or the Residential Regulations shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law. The Residence Owners hereby agree that as a condition precedent to any claim seeking usury penalties against the Residential Declarant or the Residential Association, any Residence Owner will provide written notice to the Residential Declarant or the Residential Association, advising the Residential Declarant or the Residential Association in reasonable detail of the nature and amount of the violation, and the Residential Declarant or the Residential Association shall have 60 days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to a Residence Owner or crediting such excess interest against the obligation then owing by such Residence Owner to the Residential Declarant or the Residential Association.

Section 12.8 Use of Number and Gender. Whenever used in this Residential Declaration, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders.

Section 12.9 Governing Law. THIS RESIDENTIAL DECLARATION AND THE RESIDENTIAL BYLAWS, RESIDENTIAL CERTIFICATE OF FORMATION, AND RESIDENTIAL REGULATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE RESIDENTIAL CONDOMINIUM SHALL BE IN HIDALGO COUNTY, TEXAS.

Section 12.10 Notice. All notices or other communications required or permitted to be given pursuant to this Residential Declaration shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto, notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service, notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the Residential Declarant and the Residential Association shall be as set forth below, the address of each Residence Owner shall be the address of the Residence and the address of each Residential Mortgagee shall be the address provided to the Residential Association, provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the Residential Association in the manner set forth herein:

Residential Declarant: Infinity San Antonio Investments, LLC
 17902 La Cantera Parkway
 San Antonio, Texas 78256

Residential Association: The Ricchi Luxury Condominium Association
 c/o 17902 La Cantera Parkway
 San Antonio, Texas 78256

Section 12.11 Estoppel Certificates. Each Residence Owner, from time to time but no more often than once each calendar year, shall have the right to require the Residential Association to deliver to the requesting Residence Owner a written statement addressed to the requesting Residence Owner and its Residential Mortgagee or purchaser of its Residence, as applicable, without payment of any fee or cost certifying:

(a) this Residential Declaration is unmodified and in full force and effect (or if modified that this Residential Declaration as so modified is in full force and effect);

(b) the Residential Declaration attached to the certificate is a true and correct copy of this Residential Declaration and all amendments hereto;

(c) the date through which all Residential Assessments have been paid by the Residence Owner requesting the certificate;

(d) to the knowledge of the Residential Association the requesting Residence Owner is not in default of any of its obligations under the Residential Declaration (or if this Residential Association knows the requesting Residence Owner to be in default, specifying the defaults and the remaining cure period, if any);

(e) the Residential Association holds no existing liens against the requesting Residence Owner's Residence; and

(f) such other matters as are reasonably requested by the requesting Residence Owner.

Section 12.12 Right to List. Residential Declarant hereby reserves for itself during the period of Residential Declarant Control the exclusive right to select the real estate firm to list each Residence for a term of six months from and after the date each Residence Owner decides to sell such Owner's Residence.

Section 12.13 Residential Declarant's Right of Purchase. Residential Declarant, or its assigns, reserves the right of first refusal to purchase any Residence to be conveyed by a Residence Owner. In the event a Residence Owner receives a contract from the purchase of a Residence, the Residence Owner, prior to accepting the contract, shall provide Residential Declarant, or its assigns, with an opportunity to review the terms of the contract for a period of fifteen (15) days ("Review Period") and with the opportunity to contract to purchase the Residence on the same terms and conditions at any time within the Review Period. In the event the Residential Declarant or its assigns does not contract to purchase the Residence within the Review Period, the Residence Owner may sell the Residence under the reviewed contract free and clear of this right of first refusal.

ARTICLE XIII

Provisions Applicable to Residential Mortgagees

Section 13.1 Notice to Residential Mortgagees. All Residential Mortgagees shall be entitled to receive the following notices in writing from the Residential Association exercising rights affecting that Residential Mortgagee's borrower's rights under this Residential Declaration or affecting such Residential Mortgagee's rights, which notices shall be sent promptly following occurrence of the applicable event:

(a) notice of any proposed action which requires the consent of Residential Mortgagees, with notice shall be given not less than 30 days prior to the desired effective date of such action;

(b) notice of default by a Residence Owner (the beneficial interest in which Residence is held by that Residential Mortgagee) in the performance of such Residence Owner's obligations or delinquency in the payment of Residential Assessments or Residential Governmental Impositions, which remains uncured for a period of 60 days after notice thereof;

(c) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained hereunder by the Residential Association or by any Residence Owner;

(d) notice of any damage or destruction to or Taking of any portion of the Residential Condominium that affects either a material portion of the Residential Property or any Residence, the beneficial interest in which is held by that Residential Mortgagee, which notice shall be given promptly upon the Residential Association's obtaining knowledge of such damage or destruction;

(e) notice of any proposed payment to be made by any Person on behalf of a Residence Owner which pursuant to the terms of this Residential Declaration may result in a lien on such Residence Owner's Residence;

(f) 50 days notice prior to the Residential Association instituting any foreclosure action on a Residence (the beneficial interest in which is held by that Residential Mortgagee);

(g) 30 days notice prior to the effective date of (1) any proposed material amendment to this Residential Declaration or the Residential Map; (2) any termination of an agreement for professional management of the Residential Property following any decision of the Residence Owners to assume self-management of the Residential Property; and (3) any proposed termination of the Residential Condominium; and

(h) notice of all meetings of the members of the Residential Association.

Section 13.2 Cure Rights. Any Residential Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Residential Declaration, and without payment of any penalty, to do any act or thing required of such Residential Mortgagee's borrower hereunder, and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions of such Residence Owner hereof. All payments so made and all things so done and performed by any Residential Mortgagee shall be effective to prevent a default under this Residential Declaration as the same would have been if made, done and performed by a Residence Owner instead of its Residential Mortgagee. Any event of default under this Residential Declaration which in the nature thereof cannot be remedied by a Residential Mortgagee shall be deemed to be remedied

if, within 30 days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto, the Residential Mortgagee shall have: (a) acquired the property owned by the defaulting party (the "Acquired Property") or commenced foreclosure or other appropriate proceedings in the nature thereof and shall thereafter diligently prosecute any such proceedings, (b) fully cured any default in the payment of any monetary obligations owned the non-defaulting party hereunder within such 30 day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require possession of the Acquired Property and (c) after gaining possession of the Acquired Property following a foreclosure or deed in lieu thereof, the Residential Mortgagee performs all future obligations of the defaulting party hereunder as and when the same are due.

Section 13.3 No Invalidity of Mortgage Lien. No violation of this Residential Declaration by, or enforcement of this Residential Declaration against, any party shall affect, impair, defeat or render invalid the lien of any mortgage that secures Priority Lien Indebtedness.

Section 13.4 Mortgage Requirements. The Residential Association agrees to cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by a Residential Mortgagee; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under this Residential Declaration.

Section 13.5 Unpaid Residential Assessments. Each Person holding a mortgage secured by any Priority Lien Indebtedness encumbering any Residence, which Person obtains title to such Residence pursuant to judicial foreclosure, or the powers provided in such mortgage, or a deed in lieu of foreclosure, shall take title to such Residence free and clear of any claims for unpaid Residential Assessments against such Residence which accrued prior to the time such Person acquires title to such Residence, except as otherwise set forth in Article VII above.

Section 13.6 Books and Records. All Residential Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Residential Association, including current copies of the Residential Governing Documents, and financial statements, during normal business hours, (b) receive written notice of all meeting of the Residence Owners; and (c) designate in writing a representative to attend all such meetings.

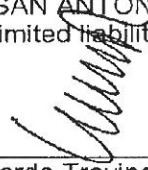
Section 13.7 Priority of Rights. No provision of the Residential Declaration shall be construed or applied to give any Residence Owner priority over any rights of any Residential Mortgagee in the case proceeds or awards are not applied to restoration but are distributed to Residence Owners in the case of a casualty loss or Taking of, a Residence and/or Residential Common Element.

Section 13.8 Required Percentage. Any required percentage of Residential Mortgagees in this Residential Declaration shall mean and refer to such percentage of the face amount of the indebtedness held by such Residential Mortgagees and not the number of such Residential Mortgagees.


IN WITNESS WHEREOF, Residential Declarant has duly executed this Declaration on the 14 day of March, 2013.

RESIDENTIAL DECLARANT:

INFINITY SAN ANTONIO INVESTMENTS, LLC
A Texas limited liability company



By: Leobardo Trevino,
Managing Member



By: Abraham Gutierrez, Managing Member

ACKNOWLEDGMENT


STATE OF TEXAS

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§
§

COUNTY OF Bexar

This instrument was acknowledged before me on MARCH 14, 2013
by Leobardo Trevino, Managing Member of Infinity San Antonio Investments, LLC a
Texas limited liability company, on behalf of said company.




Notary Public, State of Texas
My commission expires: _____

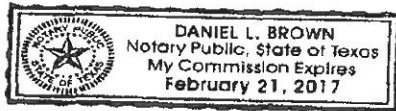
ACKNOWLEDGMENT

STATE OF TEXAS

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COUNTY OF HIDALGO

This instrument was acknowledged before me on MARCH 14, 2013,
by Abraham Gutierrez, Managing Member of Infinity San Antonio Investments, L.L.C, a
Texas limited liability company, on behalf of said company.





Notary Public, State of Texas
My commission expires: _____

EXHIBIT 'A'

Residential Map

(The Residential Map follows this cover page)