

**BYLAWS
OF
THUNDERBIRD SUTTON PLACE TOWNHOUSES
ASSOCIATION, INC.**

BY-LAWS OF
THUNDERBIRD SUTTON TOWNHOMES ASSOCIATION, INC.

ARTICLE I
NAME

The name of the corporation is THUNDERBIRD SUTTON PLACE TOWNHOMES ASSOCIATION, INC., a non-profit corporation, hereinafter referred to as the "Association".

ARTICLE II
DEFINITIONS

2.1. "Association" shall mean and refer to THUNDERBIRD SUTTON PLACE TOWNHOMES ASSOCIATION, INC., a non-profit corporation, its successors and assigns.

2.2. "Project" shall mean and refer to the entire real estate described in Exhibit "A", attached to the Declaration, divided into Condominiums, including all structures thereon, and the Common Areas and Units within said real estate description.

2.3. "Condominium" shall mean a condominium as defined in the Texas Condominium Act, and shall be an estate in real property consisting of (a) a separate fee interest in the space within a Unit, and (b) an undivided interest as a tenant in common in the Common Areas.

2.4. "Unit" shall mean and refer to the elements of a Condominium which are not owned in common with other Owners of other Condominiums. The boundaries of a Unit shall be the interior surfaces of the perimeter walls, floors, ceilings, windows and doors of each Unit; and, the exterior surfaces of the balconies and/or patios appurtenant to the Unit. The Unit shall include both the portions of the building so described and the air space so encompassed. In interpreting deeds and plans, the existing physical boundaries of the Unit; or the Unit reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be its boundaries, rather than the metes and bounds, or other description, expressed in the deed or plan, regardless of settling or lateral movement of the building, and regardless of minor variance between the building, and regardless of minor variance between boundaries shown on the plan or in the deed and those of a building.

2.5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a Condominium which is a part of the Project,

including contract sellers, but excluding those having such interest merely as security for the performances of an obligation.

2.6. "Common Area" Shall mean and refer to the entire Project, excepting those portions thereof which lie within the boundaries of any Unit, as hereinabove defined.

2.7. "Limited Common Area and Facilities" shall mean a portion of the Common Areas set aside and allocated for the exclusive use of individual Owners.

2.8. "Common Assessment" shall mean and refer to that portion of the cost of maintaining, improving, repairing, and managing the Project, and all other "Common Expenses" as provided in the Declaration which is charged to the Owner of each respective Condominium.

2.9. "Special Assessment" shall mean and refer to a charge against a particular Owner and his Condominium equal to the cost incurred by the Association for corrective action performed pursuant to provisions of these By-Laws and of the Declaration.

2.10. "Mortgage" shall mean the conveyance of any Condominium or other portion of the Project to secure the performance of an obligation, which conveyance shall be released or reconveyed upon the due performance of said obligation, and shall include a deed of trust.

2.11. "Mortgagee and Mortgagor" shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a deed of trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another, or who conveys his or its property to another by deed of trust.

2.12. "Developer" shall mean and refer to SUTTON PLACE JOINT VENTURE, a Joint Venture, its successors and assigns.

2.13. "Rules and Regulations" shall mean the Rules and Regulations governing the use of the Common Areas and the recreational facilities thereon, duly adopted by the Association.

2.14. "Common and Special Expense"

2.14.1 "Common Expenses" shall mean (a) the expense of, and reasonable reserves for, the maintenance, management, operation, repair and replacement of the Common Areas as to which it is the responsibility of the Association to maintain, repair and replace, including the cost of unpaid Special Assessments; (b) the cost of capital improvements time authorize; (c) the

expense of management and administration of the Association, including without limitation, compensation paid or incurred by the Association to a manager, accountants, attorneys or other employees or agents; and (d) any other item or items designated by or in accordance with other provisions of these By-Laws or Declaration to be Common Expenses, and any other expenses reasonably incurred by the Association on behalf of all Owners, including all expense for gas, water and electricity which are currently subject to master meters for all of the units and the Common Areas.

2.14.2 "Special Expense" shall mean (a) the expenses incurred by the Association for the repair of damage or loss to the common Areas or the property of other Owners caused by the act or neglect of Owner which is not fully covered by insurance; (b) the expense of repair or reconstruction of building damaged or destroyed by fire or other casualty for which there shall be insufficient or no insurance coverage and the repair of which will directly benefit less than all of the Owners; and (c) any other item or items designated by or in accordance with other provisions of these By-Laws or the Declaration to be Special Expenses.

2.15 "Member" shall mean and refer to that certain Condominium Declaration for THUNDERBIRD SUTTON PLACE TOWNHOMES dated _____, 20____, which was recorded in the Office of the County Clerk of El Paso County, Texas, on _____, 20____, under File Number _____, and any amendment thereto.

ARTICLE III MEMBERSHIP

3.1. "Membership". Every person or entity who is an Owner of a Condominium which is subject by the Declaration to assessment by the Association, including contract sellers, shall be of the Association. The foregoing is no intended to include person or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership, per unit. Membership shall be appurtenant to and may not be separated from ownership of any Condominium which is subject to assessment by the Association. Ownership of such Condominium shall be the sole qualification for membership.

3.2. "Suspension of Membership". During any period in which a Member shall be in default in the payment of any common or special assessment levied by the Association, the voting rights and right to use the facilities and public utilities of the Common Areas of such Member may be suspended by the Board of Directors until such assessment has been paid. Such rights of a Member

(except as to the use of utilities) may also be suspended, after notice and hearing, for a period not to exceed thirty (30) days, for any single infraction of any rules and regulations established by the Board of Directors governing the use of the Common Areas.

ARTICLE IV MEETINGS OF MEMBERS

4.1. **Place of Meetings.** Meetings of the Association shall be held at 350 Thunderbird Drive, El Paso, Texas, or at such other place in El Paso, Texas as the Board of Directors may determine.

4.2. **Annual Meeting.** The first annual meeting of the Association shall be held in El Paso County when 51% of the Units have been sold or within one year of the date of close of the first sale of a Condominium in the Project, whichever occurs first. Thereafter, the annual meetings of the Association shall be held within 15 days of the anniversary date of the first annual meeting in each succeeding year. At such meetings there shall be elected by ballot of the Owners a Board of Directors in accordance with the requirements such other business of the Association as may properly come before them.

4.3. **Special Meetings.** It shall be the duty of the President to call a special meeting of the Association as directed by resolution of the Board of Directors or upon petition signed by a majority of the Owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of 75% of the votes represented at such meeting, in person or by proxy.

4.4. **Notice and Place of Meeting.** It shall be the duty of the Secretary to deliver either personally or by mail a notice of each annual or special meeting, stating the purpose thereof as well as the date, time and place where it is to be held, to each Member entitled to vote thereat at least ten (10) but not more than fifty (50) days, prior to such meeting. If delivered personally, same shall be deemed to have been delivered when actually received by the Owner or when left at the front door of his Unit. If mailed, same shall be deemed delivered when deposited in the United States Mail addressed to the Owner at his address as it appears on the records of the Association, with postage thereon prepaid.

4.5. **Classes of Membership.** The Association shall have two classes of voting membership with the voting rights hereinafter indicated:

Class A Members. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one(1) vote for each

Condominium in which they hold the interest required for membership. When more than one person holds such interest or interest in any Condominium, all such persons shall constitute one member, and the one(1) vote for such Condominium shall be exercised as they among themselves shall determine, but in no event shall more than one vote be cast with respect to any such Condominium.

Class B Members. Declarant, and its successors and assigns, shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

(2) On December 31, 1978.

4.6. **Voting.** The affirmative vote of a majority of votes entitled to be cast by both Class A Members and Class B Members present, either in person or by proxy, at a meeting at which a quorum is present, shall be necessary for the transaction of business, unless the vote of a greater number is required by law or the Declaration.

4.7. **Majority of Owners.** As used in these By-Laws, the term "majority of owners" shall mean those Owners holding 51% of the total votes of both Class A Members and Class B Members (if any), determined in accordance with the voting provisions contained herein and in the Declaration.

4.8. **Quorum.** Except as otherwise provided in these By-Laws, the presence in person or by proxy of a "majority of Owners" as defined in 4.7 of this Article shall constitute a quorum.

4.9. **Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by an Owner of his Unit.

4.10. **Adjourned Meetings.** If any meeting of the Association cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may as otherwise provided by law adjourn the meeting to a time not less than forty-eight (48) hours nor more than thirty (30)

days from the time the original meeting was called, at which meeting the requirement for a quorum shall be 25% of the total votes of both Class A and Class B (if any) Members, determined in accordance with the voting provisions contained herein and in the Declaration.

ARTICLE V PROPERTY RIGHTS – RIGHTS OF ENJOYMENT

5.1. Each Member shall be entitled to the use and enjoyment of the Common Areas as provided in the Declaration. Any Member may delegate his rights of enjoyment of the Common Areas to the members of his family who reside with him in his Condominium and to his tenants or contract purchasers who reside in his Condominium. Such Member shall notify the Secretary of the Association in writing of the name of any such delegee. The rights and privileges of such delegee are subject to suspension to the same extent as those of the Member.

ARTICLE VI BOARD OF DIRECTORS

6.1. **Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors composed of at least three (3), but not more than nine (9) persons, who may be non-residents of the State of Texas and non-members of the Association.

6.2. **Election and Term of Office.** At the first annual meeting the Members of the Association shall elect three (3) or more Directors to succeed the original Directors. The term of office of each Director shall be fixed for two (2) years. The Directors shall hold their first meeting.

(a) Members of the Board of Directors shall be elected by a plurality of the votes cast at the annual meeting of the Members of the Association.

(b) Cumulative voting shall not be allowed.

6.3. **Removal.** At any annual or special meeting of the Association duly called, any one or more of the Directors may be removed by a plurality vote of the Members with or without cause, and a successor may then be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

6.4. **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may

constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

6.5. **Directors' Fees.** Directors' fees if any, shall be determined by the Members of the Association.

ARTICLE VII MEETING OF DIRECTORS

7.1. **Organization Meeting.** The first meeting of a newly elected Board of Directors shall be held within thirty (30) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board of Directors shall be present.

7.2. **Place and Notice of Meetings.** Meeting of the Board of Directors, regular or special, may be held either within or without the State of Texas, upon the giving of notice to each Director, personally or by mail, telephone or telegraph, at least seven (7) days prior to the day named for such meeting. Attendance by a Director at any meeting shall constitute a waiver of notice by him of the time and place thereof except when a Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special in the notice of such meeting.

7.3. **Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which quorum is present shall be regarded as the act of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

ARTICLE VIII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

8.1. **Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the Members of the Association. These powers shall include but not be limited to the power to adopt and publish

rules and regulations governing the use of the Common Areas and the personal conduct of the Members and their guests thereon.

8.2. **Committees.** The Board of Directors, by Resolution adopted by a majority of the Directors in office, may designate one or more committees of Directors, each of which committees shall consist of two or more Directors, which committees, to the extent provided in such Resolution, shall have and exercise the authority of the Board of Directors in the management of the corporation. Provided, however, the appointment of such committees and the delegation thereto of the authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law.

8.3. **Architectural Control Committee.** The Board of Directors shall appoint an Architectural Control Committee composed of at least three (3) Members (who need not be Directors) to approve, control and supervise all construction activities of Members with respect to their Units or the Common Areas required by the Declaration to be controlled, supervised or approved by the Association. The Committee shall meet within application to it for approval of plans for alterations or modifications of his Unit of the Common Areas (including his Patio Area or Balcony), submitting at that time two (2) sets of plans and specifications showing the nature of the proposed alteration or modification in reasonable detail. The Committee shall render its written decision thereon within thirty (30) days after such meeting, either approving the plans or disapproving same, in the latter case making specific reference to those features which caused the disapproval. Approval may be conditioned upon completion within a specified period of time. All decisions shall be made by a majority vote of the Committee. A failure of the Committee to notify the Member of its action within forty-five (45) days after written application has been filed with the Committee shall result in the automatic approval of such have the duty to investigate any violations of Members falling within its jurisdiction which have been called to its attention, or any Member thereof, and immediately to report such violations to the President and make recommendations for curative action for adoption by the Board of Directors.

8.4. **Other Duties.** In addition to the duties imposed by these By-Laws or by resolution of the Association, the Board of Directors. Shall be responsible for the following:

- (a) Care, upkeep and surveillance of the Project, the Common Areas, and the Limited Common Areas.
- (b) Collection of monthly assessments from the Owners.
- (c) Designation and dismissal of the personnel necessary for the maintenance and operation of the Project, the Common Areas and the Limited Common Areas.
- (d) The right of the Association to suspend the right to use the

recreational facilities upon the Common Areas by an Owner (i) for any period during which such Owner shall be delinquent in the payment of assessments due the Association or during which he shall remain in default of any other obligation herein provided, and (ii) for any period not to exceed thirty (30) days for a single infraction of the Rules and Regulations. Provided, however, except for failure to pay assessments, no such suspension shall be effected until the Owner shall have been given the opportunity to present evidence on his behalf at a hearing before the Board of Directors, and no such hearing before the Board of Directors, and no such hearing shall be held until the Owner shall have received at least ten (10) days written notice specifying the nature of the charge against him and the exact time and place of the hearing. By acceptance of a deed to any Condominium in this Project, the Owner does hereby irrevocably give and grant unto the Association, its agents and employees, a power of attorney, in his place and stead, to disconnect or take other appropriate steps to discontinue the Owner's use of the public utilities serving his respective Unit in the case of any such suspension.

8.5. Management Agent. The Board of Directors shall employ for the Association a manager or management agent at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize, including, but not limited to, the duties listed in 8.4 of this Article. Any such manager or management agent must qualify as a "professional management agent" as defined in the Declaration.

8.6 Liability of the Board of Directors. The members of the Board of Directors shall not be liable to the Owners for any non-willful tort, mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each member of the Board of Directors against all loss, costs and expenses (including counsel fees reasonably incurred by him) in connection with any action, suit or proceeding to which he may be a party by reason of his being or having been a Director or officer of the Association, except as to matters as to which he may be finally adjudged in such action, suit or proceeding, to be liable for willful misconduct or bad faith. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by its counsel that the person to be indemnified has not been guilty of willful misconduct or bad faith as such Directors or officer. The costs of any such indemnification shall be treated and handled by the Association as an item of Common Expense as provided in the Declaration.

ARTICLE IX OFFICERS

9.1. Designation and Election of Officers. The officers of the

Association shall be a President, a Vice President, a Secretary and a Treasurer, who shall be members of, and chosen by, the Board of Directors at its annual meetings, and shall serve for and during the period until the next meeting of the Board, or until their successors shall have been chosen and qualified. Such other officers and assistant officers and agents (who need not be Directors as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary.)

9.2. **Removal of Officers.** Upon an affirmative vote of a majority of the members of the Board of Directors any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors called for such purpose.

9.3. **Resignation of Officers.** Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.4. **Vacancies.** Any vacancies occurring in any office shall be filled by the remaining Board of Directors, even though they may constitute less than a quorum.

9.5. **President.** The President shall be the chief executive office of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

9.6. **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to so do on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

9.7. **Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of secretary or as required by the Board of Directors.

9.8. **Treasurer.** The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

9.9. **Compensation of Officers and Employees.** The compensation of all officers and employees of the Association shall be fixed by the Board of Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association nor preclude the contracting with a Director for the management of the Project or otherwise, provided that no Director may vote upon any matter providing for his employment and/or compensation.

ARTICLE X MORTGAGES

10.1. **Notice to Association.** An Owner who mortgages his Unit shall notify the Association through the manager or management agent, or the President of the Board of Directors, of the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Units". Such notices may likewise be given by any mortgagee directly to the Association.

10.2. **Notice of Unpaid Assessments.** The Association shall at the request of a mortgagee of a Unit report any unpaid assessments due from the Owner of such Unit. The Association shall give written notification to mortgagee of a Unit when the Owner of such Condominium is delinquent in the payment of any assessment of thirty (30) days or more.

ARTICLE XI SUPPLEMENTARY PROVISIONS

Basic provisions governing the functions and activities of the Association are set forth in the Declaration. To the extent not inconsistent with the Declaration, the functions and activities of the Association shall be supplemented by the following provisions:

11.1. **Assessment Roll.** The Association shall maintain an assessment roll in a set of accounting books in which there shall be an account for each Unit. Such an account shall designate the name and address of the Owner, the amount of each assessment against the Owner, the dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due on assessments.

11.2. **Budget.** The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the costs of performing the functions and activities of the Association as set forth herein and in the Declaration.

11.3. **Proposed Assessments Against Each Member.** Copies of the proposed budget and proposed assessments against each member of the Association shall be transmitted to each Member of the Association on or before January 1 (or year) of the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each Member of the Association concerned.

11.4. **Depository of Association Moneys.** The depository of the moneys of the Association shall be one or more banks or other financial institutions whose deposits are insured by the Federal Deposit Insurance Corporation as shall be designated from time to time by the Board of Directors. Withdrawal of moneys from such accounts shall be only by checks or withdrawal orders signed by such persons as are authorized by the Board of Directors.

11.5. **Audit.** An audit of the accounts of the Association shall be made annually by a certified public accountant chosen by the Board of Directors, and a copy of said report shall be furnished to each Member and his mortgagee, if any, within thirty (30) days from the completion of the audit.

11.6. **Fidelity Bonds.** Fidelity bonds shall be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for moneys of the Association in such amounts and containing the terms and conditions as provided in the Declaration.

11.7. **Checks.** All checks or demands for money and notes of the Association shall be signed by such officer or officers, or such other person or person as the Board of Directors may from time to time designate.

11.8. **Donations.** The Association may accept gifts, legacies, donations and/or contributions in any amount and any form, from time to time, upon such terms and conditions as may be decided from time to time by the Board of Directors.

11.9. **Corporate Seal.** The Board of Directors may, but shall not be required to, provide for a corporate seal, which shall be in such form and contain such inscription as the Board of Directors may deem proper and which may be altered from time to time or dispensed with at any time at the pleasure of the Board of Directors.

11.10. **Waiver of Notice.** Unless otherwise provided by law, whenever any notice is required to be given to any Member or Director of the Association under the provisions of these By-Laws or under the provisions of the Articles of Incorporation or under the provisions of the Texas Non-Profit Corporation Act, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

11.11. **Action Without Meeting.** Any action required by the Texas Non-Profit Corporation Act to be taken at a meeting of the Board of Directors of the Association, or any action which may be taken at a meeting of the Board of Directors or of any committee, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all the Members entitled to vote with respect to the subject matter thereof, or all of the Directors, or all the members of the Committee as the case may be.

11.12. **Association Records.** Each Owner and each Mortgagee, or its authorized agent or representative, shall have the right to examine and review the Association's records required herein or in the Declaration during normal business hours.

11.13. **Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board of Directors shall designate a fiscal period ending other than on December 31.

11.14. **Principal Office.** The principal office shall be established and maintained in the County of El Paso, State of Texas.

11.15. **Amendments.** These By-Laws may be amended by the Association in a duly constituted annual or special meeting for such purpose and no amendment shall take effect unless approved by Owners representing a majority of the total votes of both Class A Members and Class B Members in attendance at any such membership meeting. No amendment shall conflict with any provision of the Declaration.

11.16. **Conflict.** In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, the Articles of Incorporation shall control; and in case of any conflict between the Declaration and these By-Laws or the Articles of Incorporation, the Declaration shall control.

11.17. **Paragraph Titles.** Paragraph Titles used in these By-Laws are for convenience of reference only and are not intended to limit, enlarge or change the meaning of the contents of the various paragraphs.