

**SECOND AMENDMENT TO DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
SCENIC CREST PLACE CONDOMINIUMS,  
PREVIOUSLY KNOWN AS  
2500 SCENIC CREST CONDOMINIUM  
A CONDOMINIUM PROJECT  
LOCATED IN THE  
CITY AND COUNTY OF EL PASO  
STATE OF TEXAS**

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**SECOND AMENDMENT TO DECLARATION OF  
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OF**

**SCENIC CREST PLACE CONDOMINIUMS**

THIS SECOND AMENDMENT TO DECLARATION is made this 26<sup>th</sup> day of May, 2011, by Harry M. Farah & Associates, Inc., a Texas Corporation, hereinafter referred to as the "Declarant", as follows:

**WITNESSETH:**

**WHEREAS**, the previous Declarant, namely Harry M. Farah, Individually, on November 21, 1975, filed the Declaration for the 2500 Scenic Crest Condominiums, now known as the Scenic Crest Place Condominiums, which Declaration is recorded in Volume 642, Page 626, Real Property Records, El Paso County, Texas (the "Declaration");

**WHEREAS**, Scenic Crest Place Condominiums filed its First Amendment to Declaration (the "First Amendment to Declaration"), dated on or about October 19, 2009, and recorded under El Paso County Clerk Document #20090074386; and

**WHEREAS**, the Declaration and the First Amendment to Declaration govern the following described real property:

Lots 1, 2, 3, 4 and the East 8 feet of Lot 5, Block 25, Highland Park Addition to the City of El Paso, County of El Paso, State of Texas, and more commonly known as 2500 Scenic Crest Place;

Such real property being hereinafter referred to as the "Property"; and

**WHEREAS**, it is the desire of the Declarant and the Owners of all Condominium Units/Apartments (the "Owners"), and the Mortgagees (the "Mortgagees") of all said Condominium Units/Apartments to amend the Declaration a second time, without amending or altering the Declaration and/or the First Amendment to Declaration except to the extent set forth herein; and

**WHEREAS**, it is the desire of said parties, in executing and adopting this Second Amendment to Declaration ("Second Amendment to Declaration") to fully comply with the Texas Condominium Act ("TCA") as set forth in the Texas Property Code §81.001 Et. Seq., said Condominium Project having been formed prior to January 1, 1994;

**WHEREAS**, Declarant and the Owners are the owners of the real property situated in the City and County of El Paso, State of Texas, which is described as follows:

Lots 1, 2, 3, 4 and the East 8 feet of Lot 5, Block 25, Highland Park Addition to the City of El Paso, County of El Paso, State of Texas, and commonly known as 2500 Scenic Crest Place;

again, such real property being hereinafter referred to as the "Property;" and

**WHEREAS**, Declarant and Owners desire to, for a second time, amend their Declarations and fully comply with the Texas Condominium Act ("TCA"), except to the exclusion, where appropriate, the Texas Uniform Condominium Act, Texas Property Code.

**NOW THEREFORE**, Declarant, Owners and Mortgagees do hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed covenants running with the land encompassing the property and shall be a burden and a benefit to Declarant, the Owners, Mortgagees, and their grantees, heirs, executors, administrators, devisees, Mortgagees, successors and assigns, and any person acquiring or owning an interest in the Property and improvements thereon which is subject to this Second Amendment to Declaration, and the First Amendment to Declaration, their grantees, successors, heirs, executors, administrators, devisees, assigns and Mortgagees.

1. **Definitions**. As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

(a) "**Articles**" means the Articles of Incorporation of the Association.

(b) "**Association**" means The Scenic Crest Place Condominiums Association, Inc., a Texas Non-Profit Corporation, its successors and assigns, the Articles and Bylaws of which, as hereinafter defined, along with this Second Amendment to First Amendment to Declaration, shall govern the administration of the Condominium Project; the members of which shall be all of the Owners.

(c) "**Board of Directors**" or "**Board**" means the governing body of the Association.

(d) "**Building**" means the building improvements erected within the Project, as herein defined or described, including the "Limited Common Elements" and "Garage Units"/"Carports".

(e) "**Bylaws**" means the bylaws of the Association.

(f) "**Common Elements**" means all of the Project, as hereinafter defined, except the portions thereof which constitute Units, and also means all parts of the Building or any facilities, improvements and fixtures which may be within a Unit which are or may be necessary or convenient to the support,

existence, use, occupation, operation, maintenance, repair or safety of the building or any part thereof or any other Unit therein.

Without limiting the generality of the foregoing, the following shall constitute Common Elements:

- (i) all of the land and easements which are part of the Property and the swimming pool and related recreational facilities which may be located on the Property;
  - (ii) all foundations, columns, girders, beams and supports of the Building;
  - (iii) all deck or yard areas, storage lockers or areas, fireplaces, doors, windows and parking spaces (subject to specific assignment for individual Owner use as Limited Common Elements, as hereinafter defined and provided);
  - (iv) the exterior walls of the Building, the main or bearing walls within the Building, the main or bearing subflooring and the roofs of the Building;
  - (v) all entrances, exists, vestibules, halls, corridors, lobbies, lounges, storage rooms, laundry rooms, locker rooms, shower and dressing rooms, kitchen facilities, exercise rooms, steam rooms, guest rooms, stairs, stairways and fire escapes, if any, not within any Unit;
  - (vi) all offices (except as otherwise provided herein), utility, service and maintenance rooms, space, fixtures, apparatus, installations, elevator and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, refrigeration, air conditioning, trash, incineration, or similar utility, service or maintenance purposes, including furnaces, tanks, pumps, motors, fans, compressors, flues, vents, similar fixtures, apparatus, installations and facilities; and
  - (vii) all other parts of the Project necessary in common use or convenient to its existence, maintenance and safety.
- (g) "Common Expenses" means and includes:
- (i) all sums lawfully assessed against the Owners by the Board;

- (ii) expenses of administration, maintenance, repair or replacement of the Common Elements, as hereinafter defined;
- (iii) expenses declared Common Expenses by provisions of this Declaration and the Bylaws; and
- (iv) expenses agreed upon as Common Expenses by a vote of the Owners representing an aggregate ownership interest of at least a majority of the Owners.

(h) "Condominium Unit" means the fee simple interest and title in and to a Unit, together with the undivided interest in the Common Elements and if not otherwise stated, ownership of the Limited Common Elements (see Paragraph 4 below), including but not limited to the Garage Units appurtenant to such Unit and all other rights and burdens created by this Declaration.

(i) "Declarant" means the Declarant named herein and such successor or successors as may be designated hereafter by Declarant by written notice duly recorded.

(j) "Garage Units"/"Carports" means part of the Limited Common Elements for the exclusive fee title ownership and use as set forth in subparagraphs (q) and (r) below, as set forth on Exhibit "B" attached hereto and otherwise as referenced in this Second Amendment to Declaration.

(k) "Guest" means any agent, employee, tenant, guest, licensee or invitee of an Owner.

(l) "Limited Common Elements" means those Common Elements which are reserved for or deeded to certain Owners and for the exclusive use of said Owners, to the exclusion of the others, including, but not limited to, certain garage units ("Garage Units"/"Carports") and storage closets within the respective "Garage Units"/"Carports".

(m) "Managing Agent" means the Person employed by the Board to perform the management and operational functions of the Project.

(n) "Mortgage" means and includes any mortgage, deed of trust or other assignment or security instrument creating a lien on any Condominium Unit, and "Mortgagee" shall include any grantee, beneficiary or assignee of a Mortgage.

(o) "Owner" means the Person or Persons, as hereinafter defined, owning a Unit in fee simple together with an undivided interest in fee simple in the Common Elements, including but not limited to Garage Units (see subparagraph (j) above and subparagraph (r) below), in the percentage specified

and established in this Declaration, including the Declarant so long as any Condominium Unit, as hereinafter defined, remains unsold.

(p) "Person" means an individual, corporation, partnership, combination, association, trustee or any other legal entity.

(q) "Unit" as depicted in the Plats ("Plats") of the "Project" and buildings, attached hereto as Exhibit "A" and made a part hereof in their entirety, including the "Limited Common Elements" and "Garage Units"/"Carports", Apartment Units and Penthouse Units, and incorporated herein by reference for all purposes, Exhibit "A" constituting five (5) separate sheets/pages, the first labeled Exhibit "A" and marked in the lower right-hand corner as "A-1", and the other four (4) sheets/pages designated/labeled in the lower right hand corner as AMD 2, 3, 4 and 5, also including the individual air space which is contained in an enclosed room or rooms occupying all or part of a floor or floors in the Building, as hereinafter defined. Each Unit is shown on the "Plats", as hereinafter defined, and is identified thereon with a number. The exact boundaries of a Unit are the interior unfinished surfaces of such walls, floors and ceilings which mark the perimeter boundaries thereof, and the exterior surfaces of the balconies and/or terraces appurtenant thereto; and the Unit includes both the portions of the Building so described, the air space so encompassed and together with all fixtures and improvements therein contained but not any Common Elements which may be within a Unit. Units are described as "Apartments" in the November 21, 1975 Declaration of record in Volume 642, Page 626, Real Property Records, El Paso County, Texas.

(r) "Plats" means the map of the Project attached hereto as Exhibit "A" and incorporated herein by reference, which delineates the Property, the Building, the Units, the Common Elements and Limited Common Elements, including but not limited to the "Garage Units"/"Carports" conveyed or to be conveyed by Declarant, or his/it's successor or assigns to the appropriate Owners thereof. In the event such "Limited Common Elements" including but not limited to the "Garage Units"/"Carports" are not conveyed by separate Deed to one or more "Owners", this Second Amendment to Declaration shall irrevocably constitute a general warranty conveyance in fee simple free and clear of all liens and encumbrances, and shall thus constitute constructive notice as provided by Texas law. A description by letter and/or number designation of the "Garage Units"/"Carports" is attached hereto as Exhibit "B" and made a part hereof for all purposes, including but not limited to the purpose of the conveyance by General Warranty thereof to the Owners whose names appear opposite the description of each "Garage Unit".

(s) "Project" means all of the Property, Condominium Units, the Building and improvements submitted to a condominium regime by this Declaration.

Declarant hereby reserves unto itself and the Board, the right, from time to time, without the consent of any Owner being required, to amend the Plats and supplement(s) thereto; to conform the Plats to the actual location of any of the constructed improvements, to establish, vacate and relocate utility easements, access road easements and parking spaces, and to establish certain Common Elements as Limited Common Elements.

In interpreting any and all provisions of this Second Amendment to the First Amendment to Declaration, the Bylaws or the Condominium Regime Rules and Regulations, both of which to be amended or adopted simultaneous herewith, subsequent to deeds to and/or Mortgages of Condominium Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations from the location of such Unit indicated on the Plats.

2. **Division Into Units.** Declarant has by this Second Amendment to Declaration reconfigured/divided the Project into 9 Condominium Units, each consisting of a separate fee simple estate in a particular Unit, and an appurtenant undivided fee simple interest in the Limited Common Elements. The undivided interest in the Limited Common Elements appurtenant to a particular Unit is as is set forth on Exhibit "B" attached hereto and incorporated herein by reference.

3. **Right to Combine or Divide Units.** Declarant has and hereby reserves the right to physically combine or divide or sub-divide the area or space of one Unit (with the area or space of one or more adjoining Units, with respect to combining Units); provided, however, that Declarant shall not exercise said rights without the written consent of any first Mortgagees having an interest in said Units. In the event of any such physical combining of Units to create a combined Unit, such combined Unit shall also include the combining of the fixtures and improvements and of the undivided interest in the Common Elements appurtenant to the Units so combined. Declarant hereby reserves the right to designate and convey to any purchaser of any such combined Unit, as additional Limited Common Elements appurtenant thereto, any walls, floors or other structural separations between the Units so combined, or any space which would be occupied by such structural separations but for the combination of such Units; provided, however, that such walls, floors or other structural separations or such space shall automatically become Common Elements if the combined Units become subject to separate ownership in the future. This reserved right in Declarant shall terminate upon the sale of all of the Condominium Units within the Project to third party purchasers or as required by law. In the event of a previous subdivision of a Unit or Units, and in the event of the subdivision of Units hereafter, such subdivision shall also include the subdivision, as appropriate of fixtures and improvements and the subdivision of the undivided interests in the Common Element appurtenant to the Unit or Units so subdivided. Declarant has the right in the past and reserves the right in the future to designate and divided, or where applicable convey, to any purchaser of a subdivided Unit the Limited Common Elements appurtenant thereto and to in all respects accomplish the same rights set forth above as to a combined unit, as is appropriate for a subdivided Unit.



4. **Limited Common Elements.** Subject to the definition thereof, the Limited Common Elements shall be identified herein or on the Map/Plat and designated as appurtenant to a particular Condominium Unit herein or on the Map/Plat or in a deed from the Declarant. Any door, window, patio, deck or yard areas, which are accessible from, associated with and/or which adjoin a Unit, and which are identified as Limited Common Elements on the Map (as well as parking spaces, garage units and storage lockers identified as Limited Common Elements on the Map and conveyed by Declarant along with a Condominium Unit, or separately), shall, without further reference thereto, be used in connection with the Condominium Unit to which they are appurtenant, adjacent, or otherwise designated and/or conveyed, to the exclusion of the use thereof by the other Owners, except by invitation.

5. **Inseparability of a Condominium Unit.** An Owner's undivided interest in the Common Elements and in any appurtenant Limited Common Elements shall not be separated from the Unit to which they are appurtenant and shall be deemed to be conveyed or encumbered with the Unit even though and in the event the interest is not expressly mentioned or described in a deed or other instrument.

6. **Description of Condominium Unit.**

(a) Every contract for the sale of a Condominium Unit written prior to the filing for record of the Declaration may legally describe a Condominium Unit by its identifying Condominium Unit designation followed by the words "The Scenic Crest Place Condominiums", with further reference to this Second Amended Declaration to be recorded and with further reference to the Garage Units, parking space(s) and storage locker(s) appurtenant to such Condominium Unit. Upon recordation of this Declaration in the Condominium Records of El Paso County, Texas, such description shall be conclusively presumed to relate to the therein described Condominium Units.

(b) Every deed, lease, Mortgage, will or other instrument shall legally describe a Condominium Unit by its identifying Condominium Unit number followed by the words "Scenic Crest Place Condominiums", in accordance with and subject to the Second Amendment to Declaration of Covenants, Conditions and Restrictions of "Scenic Crest Place Condominiums", as recorded in the Real Property/Condominium Records of El Paso County, Texas, together with the right to the exclusive use of parking space(s), Garage Units and storage locker(s) as conveyed by deed to Owners. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit, but also, the Common Elements and the right to the use of or ownership, as the case may be, of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include: a non-exclusive easement for ingress and egress throughout and for use of the Common Elements which are not Limited Common Elements; the right to the exclusive use of the appurtenant

Limited Common Elements; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Second Amendment to Declaration. The undivided interest in the Common Elements appurtenant to any Condominium Unit (as well as the right to the use of the Limited Common Elements in connection therewith and which are appurtenant thereto) shall be deemed conveyed or encumbered with that Condominium Unit, even though the legal description in the instrument conveying or encumbering said Condominium Unit may only refer to the title to that Condominium Unit.

(c) The reference to the Map and Second Amendment to Declaration in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Map or Second Amendment to Declaration, without specific reference(s) thereto.

7. **No Partition.** The Common Elements shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for partition of a Unit or a Condominium Unit between or among the Owners thereof. Each Owner hereby expressly waives any and all such rights of partition he may have by virtue of his ownership of a Condominium Unit.

8. **Separate Taxation.** Each Condominium Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building, the Property nor any use of the Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit and any owned Limited Common Element(s). No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit. In the event that such taxes or assessment for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his/her ownership interest, and, in said event, such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.

9. **Title.** A Condominium Unit and Limited Common Element may be held and owned by more than one Person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.

10. **Certain Work Prohibited.** No Owner shall undertake any work in his Unit and/or Limited Common Element which would jeopardize the soundness or safety of the Project, reduce the value thereof or impair an easement or hereditament thereon or

thereto, nor shall any Owner enclose, by means of screening or otherwise, any balcony, yard, deck, patio or porch which is accessible from, associated with and which adjoins a Unit, without having first obtained the prior written approval of the Board (which approval may be withheld for any reason) for such enclosure and with respect to the materials, plans and specifications for such enclosure. Structural alterations shall not be made by an Owner to the exterior portions of his Unit or to the Building or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from the Building without the prior written approval of the Board (which approval may be withheld for any reason) first having been obtained.

11. **Use and Occupancy of Units.** Each Owner shall be entitled to the exclusive ownership and possession of his Unit and Limited Common Element. Each Unit shall be used for residential purposes only, and no Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence, each Unit shall be deemed to have been designed to accommodate safely a maximum of two permanent occupants per bedroom. No Unit shall be used at any time for any business or commercial activity, except as follows: (i) the Owner thereof may lease or rent such Unit for private residential or living purposes (subject to Paragraph 26(i) hereafter); (ii) Declarant or its nominee or agents may use any Unit(s) as a model or sales unit until all Condominium Units owned by Declarant are sold; and (iii) the Association shall have the right, but not the obligation, to purchase, own, or lease any Condominium Unit for a manager's residence or office, or building superintendent or engineer, and the Association may also maintain offices, within the Common Elements.

12. **Use of Common Elements.** Each Owner may use the Common Elements and his/her appurtenant or deeded Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Association and/or the Board may from time to time adopt rules and regulations governing the use of Common Elements, but such rules and regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument of conveyance or assignment agrees to be bound by any such adopted rules and regulations.

13. **Various Rights and Easements.**

(a) **Owner's Rights in Limited Common Elements:** Subject to the other provisions of this Second Amendment to Declaration, each Owner, his family and Guests, shall have an exclusive right to use and enjoy the Limited Common Elements designated herein, in the Map or in the initial deed from Declarant as appurtenant to the Condominium Unit owned by such Owner, except those Limited Common Elements and Garage Units which have been deeded to any particular Owner.

(b) **Association Rights:** The Association, the Board and the Managing Agent, if any, shall have a non-exclusive right and easement to make such use of and to enter into or upon the Common Elements, the Limited Common Elements and the Units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Second Amendment to Declaration.

(c) **Owners' Easements for Access, Support and Utilities:** Each Owner shall have a non-exclusive easement for access between his Unit and the roads and streets adjacent to the Project and the roads, streets and driveways in the Project, over and on the halls, corridors, stairs, walks, bridges and exterior access and other easements which are part of the Common Elements. Each Owner shall have a non-exclusive easement in, on and over the Common Elements, including the Common Elements within the Unit of another Owner, for horizontal and lateral support of the Unit which is part of his Condominium Unit, for utility service to that Unit, including but not limited to, water, sewer, gas, electricity, telephone and television service and for the release of smoke arising from any fireplace within a Unit, through the flue leading therefrom.

(d) **Easements for Encroachments:** If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on a Condominium Unit for purposes of marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

(e) **Easements in Units for Repair, Maintenance and Emergencies:** Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a particular Unit. The Association, Board and Managing Agent and each Owner shall have an easement, which may be exercised for any Owner by the Association, the Board or the Managing Agent, as his agent, for access through each Unit and to all Common Elements, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of emergency repairs within another Unit, at the instance of the Association, the Board or the Managing Agent, shall be a Common Expense of all of the Owners.

No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs and expenses of repairing such damage and according hereby agrees to at all times hereafter, indemnify, defend and hold the Declarant, the Association, its Board, Officers and representatives, and Owners Council and all other Owners, and all heirs, personal representatives, successors and assigns from any and all liability, causes of action, damages, costs, including but not limited to attorneys fees that any such Indemnitee may suffer or be required to pay or incur by reason of any Owner's breach or threatened breach of this covenant and Agreement, notwithstanding any negligence of any Indemnitee.

(f) **Easements Deemed Appurtenant:** The easements, uses and rights herein created for an Owner shall be appurtenant to the Condominium Unit of that Owner and all conveyances of and other instruments affecting title to a Condominium Unit shall be deemed to grant and reserve the easements, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

(g) **Emergency Easement:** A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Project, to enter upon all streets, roads and driveways located in the Project, and upon the Property, in the performance of their duties.

14. **Owners' Maintenance Responsibility.** For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel, the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring) making upon the finished surfaces of the perimeter walls, ceilings and floors within the Unit and the Unit's doors and windows, including any patio, balcony, yard or deck enclosure. No Owner shall, however, make any changes or alterations of any type or kind to the exterior surfaces of the doors or windows to his/her/its Unit nor to any Common Elements (including, but not limited to, the exterior portions of his/her/its Unit). The Owner shall not be deemed to own lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") running through his/her/its Unit which serve one or more other Units, except as a tenant in common with the other Owners. Each Owner shall have the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in good repair and in a clean, safe, attractive and slightly condition the interior of his/her/its Unit, including the fixtures, doors and windows thereof and the improvements affixed

thereto, and such other items and areas as may be required in the Bylaws. Also, an Owner shall maintain, clean and keep in a neat and clean condition the fireplace within his unit, the deck, yard, porch, balcony and/or patio area adjoining and/or leading to a Unit, if any, which areas are Limited Common Elements appurtenant to such Owner's Condominium Unit. All fixtures, appliances and equipment installed within a Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Board or the Managing Agent may fulfill the same and charge such Owner therefor. Any expense incurred by an Owner under this paragraph shall be the sole expense of said Owner.

15. **Compliance With Provisions of Declaration, Articles and Bylaws of the Association**. Each Owner shall comply strictly with, and shall cause each of his Guests to comply strictly with, all of the provisions of this Second Amendment to Declaration and the Articles and Bylaws, and the decisions, rules, regulations and resolutions of the Association or the Board adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, without bond, or both, along with costs of suit and reasonable attorneys fees, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

16. **The Association**.

(a) **General Purpose and Powers**: The Association, through the Board or the Managing Agent, shall perform functions and hold and manage property as provided in this Second Amendment to Declaration so as to further the interests of Owners of Condominium Units in the Project. It shall have all powers necessary or desirable to effectuate such purposes.

(b) **Membership**: The owner of a Condominium Unit shall automatically become a member of the Association. Said membership is appurtenant to the Condominium Unit of said owner and the ownership of the membership for a Condominium Unit shall automatically pass with fee simple title to the condominium Unit. Each Owner shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his Condominium Unit. If the fee simple title to a Condominium Unit is held by more than one person, each Owner of a Condominium Unit shall be a member of the Association. Memberships in the Association shall be limited to owners of Condominium Units in the Project.

(c) **Board of Directors**: The affairs of the association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an executive committee, or to a director or Managing Agent for the Association. There shall be not less than three (3) nor more than six (6) members

of the Board of Directors, the specific number to be set forth from time to time in the Bylaws, all of whom shall be Owners elected by Owners. Regardless of the number of members of the Board of Directors, the terms of at least one-third (1/3) and not more than two-thirds (2/3) of such Board shall expire annually, unless all owners agree otherwise.

(d) **Voting of Owners**: The Owner or Owners of each Condominium Unit shall be entitled to one vote for each such Condominium Unit owned by said Owner or Owners.

(e) **Bylaws and Articles**: The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws.

17. **Certain Rights and Obligations of the Association.**

(a) **Association as Attorney-in-Fact For Owners**: The Association is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of each Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Project upon its destruction or obsolescence as hereinafter provided and to grant utility easements through any portion of the Common Elements. The acceptance by any Person of any interest in any Condominium Unit shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, rebuild, administer and regulate the Project and to perform all of the duties required of it. Notwithstanding the above, but subject to the provisions of Paragraphs 7, 27, 28 and 29 (b) hereof, unless all of the first Mortgagees of Condominium Units and at least two-thirds (2/3) of the Owners (excluding Declarant) have given their prior written approval, the Association shall not be empowered or entitled to:

- (i) by act or omission, seek to abandon or terminate the Project;
- (ii) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (iii) partition, subdivide or combine any Condominium Units;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer (excluding the granting of

easements for public utilities or other public purposes consistent with the intended use of the Common Elements) any of the Common Elements; and

- (v) use hazard insurance proceeds for loss to the improvements (whether Units or Common Elements) for other than repair, replacement or reconstruction of such improvements.

(b) **Common Elements**: The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Elements, except as is provided for in paragraph 14 herein. Without limiting the generality of the foregoing, said obligations shall include the keeping of such Common Elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such Common Elements which might impair access to the project or the Units; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Elements.

(c) **Other Association Functions**: The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners on a self-supporting, special assessment or common assessment basis, such activities, functions or services may include the providing of police or similar security services, the providing of garbage and trash collection services, the providing of firewood, and the providing of maid and cleaning service individual Units.

(d) **Professional Management**: The Association may employ professional Managing Agent to perform, subject to the supervision of the Board of Directors, such duties and services as the Board of Directors shall direct, including, but not limited to, management of the Common Elements and the collection of and accounting for assessments made by the Association. Each management agreement shall provide for a rate of compensation to be established by the Board of Directors, and shall further provide for the right of the Association to terminate same with or without cause upon not more than thirty (30) days' written notice. Provided, however, in no event shall any notice of cancellation of an agreement employing a professional Managing Agent be given by the Association until the Association shall have entered into another management agreement to become effective upon the date of termination of the previous management agreement. By the term "professional Managing Agent" as used herein is meant a person or a firm who shall have been in the business of managing income-producing real properties for at least two (2) years prior to his or its employment by the Association.

(e) **Labor and Services**: The Association (i) may obtain and pay for the services of such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such



personnel are furnished or employed directly by the Association or by any Person with whom or which it contracts; (ii) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration; and (iii) may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services.

(f) **Property of Association:** The Association may pay for, acquire and hold or lease real property (for the purpose set forth in Paragraph 11 herein) and intangible personal, property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each owner's family and Guests may use such property, upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective interests in the Common Elements. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed condominium Unit.

(g) **Association Right to Lease and License Common Elements:** The Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-owners, on either a short-term basis or long-term basis and with or without charge as the Association may deem desirable, any portion of the Common Elements (other than Limited Common Elements, unless same are deeded to the Owner) or any Condominium Unit owned by the Association (which Condominium Unit may be purchased from the Declarant as provided in Paragraph 11 hereinabove). The rights granted to the Association in this subparagraph shall only be used in the promotion of the collective best interests of the Owners.

(h) **Mortgagee Notification:** The Association shall have the right but not the obligation to notify each first Mortgagee of any proposed amendment of the Association's Articles or Bylaws or any change in the Association's Managing Agent at least ten (10) days prior to the effective date of such amendment or change. Further, upon the written request of any first Mortgagee, such first Mortgagee shall be entitled to receive the most recent annual financial statement of the Association and written notice of all meetings of the Association and such first Mortgagee shall have the right to designate a representative to attend any such meeting. Otherwise, notice to any Mortgagee shall be the obligation of the "Owners".

(i) **Enforcement by Association:** The Board may suspend any Owner's voting rights in the Association or the right of an Owner to use the recreational facilities of the Project during any period or periods during which such Owner fails to comply with the Association's rules and regulations, or with any other obligations of such Owner under this Second Amendment to Declaration. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations herein or in the Bylaws contained or to obtain damages for noncompliance thereof, all to the extent permitted by law, with any defaulting Owner being obligated to pay to the Association its costs and attorney's fees associated with any such action, in addition to all other economic and consequential damages.

(j) **Certificate:** The Board of Directors may, from time to time, record a certificate of the identity and the mailing addresses of the persons then comprising the Board of Directors, together with the identity and address of the Managing Agent, if any there be. Such certificate shall be conclusive evidence thereof in favor of any Person relying thereon in good faith regardless of the time elapsed since the date thereof.

(k) **Implied Rights:** The Association shall have and may exercise any right or privilege given to it expressly by this Second Amendment to Declaration or the Articles or Bylaws, or reasonably to be implied from the provisions of said documents, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

(l) **Indemnity:** The Board of Directors and Officers of the Association shall be fully indemnified by the Association, the Declarant and all Owners except those accused of wrongdoing, for any and all conduct, actions and in-actions as fully authorized or permitted by any applicable Texas law, statutory, common law, or otherwise. This indemnity shall include but not be limited to attorney's fees, expert costs, judgments, settlements and all other out of pocket expenses. This indemnity shall be applicable regardless of the negligence, or alleged negligence of any and all Board Members and Officers of the Association. The only exception to this indemnity shall be intentional and willful, wrongdoing rising to the level of criminal conduct.

18. **Assessment for Common Expenses.**

(a) All Owners and the Declarant shall be obligated to pay the estimated assessments imposed by the Board of Directors to meet the Common Expenses. The assessments shall be made pro rata according to each Owner's and Declarant's interest in and to the Common Elements. Except as hereinbefore provided, the Limited Common Elements shall be maintained as Common Elements and Owners having the exclusive use thereof shall not be subject to any special charges or assessments. Assessments for the estimated Common Expenses

shall be due monthly, in advance, on the first day of each month. The Managing Agent, if applicable, or Board of Directors shall prepare, and deliver or mail to each Owner an itemized annual statement showing the various estimated or actual expenses for which the assessments are made. Contributions for monthly assessments shall be prorated if the ownership of a Condominium Unit commences on a day other than the first day of a month. The assessments made for Common Expenses shall be based upon the requirements deemed to be such aggregate sum as the Managing Agent or Board of Directors shall from time to time determine is to be paid to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements, which sum may include, among other things: expenses of management; taxes and special assessments, until separately assessed; premiums for insurance of the types and kinds provided for in Paragraph 21 hereafter; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash collections; wages; water and sewer charges; legal and accounting fees; capital expenditures made by the Board not exceeding \$10,000.00 in any one calendar year (unless a greater amount is approved by Owners owning a majority interest in the Common Elements) expenses and liabilities incurred by the Managing Agent, if applicable, and/or Board of Directors under or by reason of this Declaration; deficits remaining from a previous period; and other costs and expenses relating to the Common Elements. Further, it shall be mandatory for the Managing Agent, if applicable, or Board to establish, out of such monthly assessments, a contingency or reserve fund for the repair, replacement and maintenance of those Common Elements that must be replaced periodically. The omission or failure of any Managing Agent or the Board of Directors to fix the assessment for any month shall not be deemed a waiver, modification or release of the Owners from their obligation to pay same. Any Owner or first Mortgagee may inspect the Association's records of receipts and expenditures at any reasonable time during convenient weekday business hours, and upon ten days' notice to the Board of Directors or Managing Agent, if any, and upon payment of a reasonable fee, not to exceed Twenty Dollars, any Owner or first Mortgagee of such Owner shall be furnished a statement of account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner. At the end of any calendar year, the Board of Directors or any Managing Agent may, but shall not be required to, refund to each owner his/her proportionate share of funds then held by the Association which are not deemed to be necessary to meet the Common Expenses. Each Owner shall be obligated to pay all charges for any separately metered utilities servicing his unit. All utilities that are master metered shall be a Common Expense hereunder.

(b) The Board of Directors shall have the right during any calendar year to levy and assess against all of the Owners a special assessment for such purpose or purposes, in accordance with this Declaration, the Articles or Bylaws, as may be necessary to keep the Project as a first class residential property. Such special assessment shall be borne by the Owners in accordance with each Owner's interest in the Common Elements and shall be due and payable as determined by

the Board of Directors. Special Assessments can be levied and charged against any Owner that violates any provision in this Second Amendment to Declaration that results, in the sole discretion of the Board of Directors, an expense or cost of any nature to the Association. This shall include, but not be limited to, any violation of any portion of paragraph 26 below.

19. **Assessment Reserves.** At the time of its delivery of a deed to an Owner, Declarant may require such Owner to be current in the payment of Assessments, Common Expenses, and costs herein, and if deemed appropriate by the Board of Directors, to deposit with the Association an amount not exceeding six (6) times the amount of the estimated monthly common assessment, Common Expenses, which sum shall be held without interest, by the Association or Managing Agent, if applicable, a reserve to be used for paying such Owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment of the monthly common assessment as the same comes due. Upon the transfer of his Condominium Unit, an Owner shall be entitled to a credit from his transferee for any unused portion thereof.

20. **Additions, Alterations and Improvements - Common Elements.** There shall be no capital additions, alterations or improvements, of or to the Common Elements by the Association requiring expenditure(s) in excess of \$10,000.00 in any one (1) calendar year without prior approval by the Owners owning a majority interest in the Common Elements, except in the event of an emergency; the limitations set forth above shall not apply to any expenditures made by the Association for maintenance and repair of the Common Elements as set forth in Paragraph 17, hereof, or for repair in the event of damage, destruction or condemnation as provided in Paragraphs 27 and 28 hereof.

21. **Insurance.**

(a) The Board of Directors or any Managing Agent may, in their sole discretion, obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financially responsible and able companies licensed to do business in Texas, covering the risks set forth below. All Owners shall obtain and maintain appropriate Homeowners' Liability and Damage Insurance and all other insurance necessary to protect themselves their property and their guests. The types of coverages to be obtained and risks to be covered are as follows, to-wit:

- (i) Insurance against loss or damage by fire and lightning, and such other hazards as are customarily covered in condominium projects in the City and County of El Paso, Texas, under extended coverage and all risk endorsements. Said casualty Insurance shall insure the entire Project and any property, the nature of which is a Common Element (including all of the Units and the fixtures therein initially installed or conveyed by the Declarant, but not including

improvements, fixtures, decorating, furniture, furnishings, appliances, or other personal property supplied by or installed by Owners) together with all service equipment contained therein in an amount equal to the full replacement value, without deduction for depreciation. All policies shall contain a standard non-contributory mortgage clause in favor of each first Mortgagee, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of such first Mortgagees as their interests may appear.

- (ii) If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid principal balances of the first Mortgages on the Condominium Units comprising the Project.
- (iii) Public liability and property damage insurance in such limits as the Board or Managing Agent may from time to time determine, but not in an amount less than \$1,000,000.00 per injury, per person, per occurrence and umbrella claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project. All liability insurance shall name the Association, the Board, the Managing Agent, the Declarant, first Mortgagees, the Owners and the officers of the Association, as insureds thereunder.
- (iv) As determined in the sole discretion of the Board of Directors, Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.
- (v) As determined in the sole discretion of the Board of Directors, fidelity coverage against dishonesty of employees or any other Person handling funds of the Association, destruction or disappearance of money or

securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

- (vi) The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including plate or other glass insurance and any personal property of the Association located thereon.

(b) All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least twenty (20) days' prior written notice to all of the Owners, first Mortgagees and the Association. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all first Mortgagees at least ten (10) days prior to expiration of the then current policies. All casualty insurance shall be carried in blanket form naming the Association as the insured, as trustee for all of the Owners and first Mortgagees, as their interests may appear, which policies shall identify the interest of each Owner (Owner's name and Condominium Unit number designation) and first Mortgagee.

(c) Prior to obtaining an policy of casualty insurance or renewal thereof, pursuant to the provisions of this insurance paragraph, the Board or any Managing Agent may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this insurance paragraph. In no event shall the insurance policy contain a coinsurance clause for less than eighty percent (80%) of the full replacement cost. Determination of maximum replacement value shall be made annually by one or more written appraisals to be furnished by a person knowledgeable of replacement cost, and each first Mortgagee, if requested, shall be furnished with a copy thereof, within thirty (30) days after receipt of such written appraisals. Such amounts of insurance shall be contemporized annually in accordance with their currently determined maximum replacement value.

(d) Owners shall, as provided in Article/Paragraph 21(a) above, carry all necessary insurance for their benefit and at their expense, provided that such insurance shall not be brought into contribution with the insurance, if any, obtained by the Board and the liability of the carriers issuing insurance, if any, obtained by the Board shall not be affected or diminished by reason of any such insurance carried by any Owner.

(e) Any and all insurance coverage on improvements and fixtures installed by an owner and furnishings, including carpet, draperies, oven, range, refrigerator, dishwasher, wallpaper, disposal and other items of personal property belonging to an Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the Board of Directors, the Association and/or the Managing Agent shall have no responsibility therefor.

(f) In the event that there shall be any damage, destruction or loss to a Unit which exceeds \$1,000.00 or any damage, destruction or loss to the Common Elements which exceeds \$10,000.00, then notice of such damage or loss may be given by the Association to the first Mortgagee of said Condominium Unit. Each Owner shall have the primary obligation in this regard.

(g) All policies of insurance provided by the Association shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or noncompliance of any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

22. **Vendor's and Deed of Trust Liens To Secure Payment of Common Expenses.**

(a) In each deed delivered by Declarant to an Owner, there shall be expressly reserved a vendor's lien and Deed of Trust (the "Vendor's Lien" and/or "Deed of Trust Lien") to secure payment of all assessments due to become due for Common Expenses pursuant to this Second Amendment to Declaration, which Vendor's and Deed of Trust Liens shall be transferred and assigned therein to the Association. By the acceptance of the deed from Declarant, each Owner (and his subsequent grantees) assume and agree to pay such assessments in accordance with the terms and provisions of this Declaration. Such Vendor's Lien and Deed of Trust Lien shall be superior (prior) to all other liens and encumbrances upon such Condominium Unit, excepting only:

- (i) Tax and special assessment liens on the Condominium Unit in favor of any governmental assessing unit, and
- (ii) Liens of record in the El Paso County, Texas Deed/Film Records prior to the filing of this Second Amendment to Declaration.

In the event that any deed delivered by Declarant, or an Owner, to an Owner, does not expressly reserve a Vendor's Lien and/or Deed of Trust Lien to secure payment of all assessments due and become due for Common Expenses pursuant to this Second Amendment to Declaration, this Article 22 of this Second Amendment to Declaration, when filed in the Real Property Records of El Paso County, Texas shall constitute the Association's right to a Vendor's Lien and as set forth below, a Deed of Trust Lien, on the Unit and Limited Common Elements of any Owner. The Association's Vendor's and Deed of Trust Liens shall stand as security for all assessments, costs, attorney's fees, common expenses and compliance with this Second Amendment to Declaration.

(b) If any assessment shall remain unpaid after thirty (30) days after the due date thereof, the Board of Directors or Managing Agent may impose a late charge on such defaulting Owner in an amount not exceeding Ten Dollars (\$10.00) to cover the extra cost and expenses involved in handling such delinquent assessments.

(c) The Vendor's and Deed of Trust Liens may be enforced by foreclosure of the defaulting Owner's Condominium Unit and owned Limited Common Element(s), by the Association by Trustee's sale in accordance with Chapter 51 of the Texas Property Code which is incorporated herein by reference as though fully set forth herein. The Trustee ("Trustee") for the Association for foreclosure and trustee's sale purposes shall be T. O. Gilstrap, Jr., 5915 Silver Springs, Building 2, El Paso, Texas or his successor by assignment, substitution of Trustee or any similar document, filed in the Deed Records of El Paso County, Texas. Each Owner by his/her signature below irrevocably grants to the Association a Deed of Trust lien on his/her Unit and accordingly convey his/her/its Unit to the Trustee to secure all of his/her/their obligation to pay to the Association all Common Expenses, assessments, costs, attorneys fees and any and all other obligations hereunder. The Trustee shall have all powers and authority as set forth in Chapter 51 of the Texas Property Code and further as is lawful and that he/she deems appropriate in his/her sole discretion to accomplish the purposes of this trust conveyance to secure the undersigned's obligations, financial and otherwise, contained herein. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association the monthly assessment for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to the appointment of a Receiver, without bond, to collect the same. The Managing Agent or Board of Directors shall have the power to bid on the Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same. In the alternative, without waiving or modifying the foregoing, the Association may, upon default in any assessment or other sums due the Association hereunder, including the Association's duly incurred attorney's fees, foreclose on any Condominium Unit by judicial foreclosure.



(d) Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Condominium Unit, and upon such payment such encumbrancer shall have a lien on such Condominium Unit for the amounts paid of the same rank as the lien of his encumbrancer, provided that any first Mortgagee who acquires a Condominium Unit by foreclosure or by a deed in lieu thereof shall acquire title to such Condominium Unit free and clear of any lien for unpaid Common Expenses and shall only be responsible for Common Expenses arising after the date upon which such first Mortgagee receives a deed to the Condominium Unit.

(e) The association shall, upon request, deliver written notice to the first Mortgagee of a Condominium Unit of any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due, as well as, of any other default of an Owner hereunder known to the Association which is not cured within sixty (60) days.

23. **Owner's Obligations for Payment of Assessments.** The amount of the Common Expenses assessed against each Condominium Unit shall be the personal and individual debt of the Owner or Owners, jointly and severally, thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses, and costs of suit and attorney's fees, shall be maintainable without foreclosing and without waiving the lien securing same. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Condominium Unit.

24. **Liability for Common Expenses Upon Transfer of Condominium Unity is Joint.**

(a) Upon payment of a reasonable fee not to exceed One Hundred Dollars and upon ten days' prior written notice from any Owner or any Mortgagee or prospective Mortgagee of a Condominium Unit, the Association, by its Managing Agent or Board of Directors, shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Condominium Unit, the amount of the current monthly assessment, the date that such assessment becomes due, the amount of any assessment reserve on deposit with the Association and any credit for advance payments for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association in favor of all Persons who rely thereon in good faith. Unless such request for such statement shall be complied with within ten (10) days from the receipt thereof, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the Person requesting such statement.

(b) The grantee of a Condominium Unit, except a first Mortgagee who acquires a Condominium Unit by foreclosure or a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the grant or conveyances, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee not to exceed One Hundred Dollars, and upon written request, any such prospective grantee shall be entitled to a statement from any Managing Agent or Board of Directors setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Condominium Unit, the amount of the current monthly assessment, the date that such assessment becomes due, the amount of any assessment reserve on deposit with the Association and any credit for advance payments for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association in favor of all Persons who rely thereon in good faith. Unless such request for such a statement shall be complied with within ten (10) days from the receipt thereof, then such requesting grantee shall not be liable for, nor shall the Condominium Unit conveyed be subject to, a lien for any unpaid assessments against the subject Condominium Unit. The provisions contained in this paragraph shall not apply upon the initial transfer of the Condominium Units by Declarant.

25. **Mortgaging a Condominium Unit -- Priority.** Any Owner shall have the right from time to time to mortgage or encumber his Condominium Unit by deed of trust, mortgage or other security instrument. The Owner of a Condominium Unit may create junior Mortgages (junior to the lien, deed of trust or other encumbrance of the first Mortgagee) on his/her Condominium Unit on the following conditions: (1) that any such junior Mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Common Expenses, and other obligations created by this Declaration, and the Bylaws; and (2) that the Mortgagee under any junior Mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior Mortgagee upon written request of the Managing Agent or one or more of the Board of Directors of the Association, and if not furnished, may be executed by the Association as attorney-in-fact for such junior Mortgagee.

26. **Restrictive Covenants and Obligations.**

(a) **No Imperiling of Insurance:** No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on the Project which might result in an increase in the premiums of insurance obtained for the Project or which might cause cancellation of such Insurance.

(b) **No Violation of Law**: No Owner and no Owner's Guests shall do anything or keep anything in or on the Project which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(c) **No Noxious, Offensive, Hazardous or Annoying Activities**: No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on or in any part of the Project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project which are or might be unsafe or hazardous to any Person or property. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of the Project which is unreasonably bright or causes unreasonable glare.

(d) **No Unsightliness**: No unsightliness or waste shall be permitted on or in any part of the Project. No Owner shall keep or store anything (except in designated storage areas) on or in any of the Common Elements; nor shall any owner hang, erect, affix or place anything upon any of the common Elements (except for decorative items within his Unit); and nothing shall be placed on or in windows or doors of Units, which would or might create an unsightly appearance.

(e) **Restriction on Animals**: No animals or birds, other than a reasonable number of generally recognized house pets, shall be maintained in any Unit or upon the Common Elements and then only if they are kept, bred, or raised thereon solely as domestic pets and are not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal or bird shall be maintained so as to be visible from neighboring property. Upon the written request of any owner the Board of Directors shall conclusively determine, in its sole and absolute discretion, whether for the purposes of this Paragraph 26(e) a particular animal or bird is a generally recognized house pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable.

(f) **Restrictions on Signs**: No signs or advertising of any nature shall be erected or maintained on any the Project without the prior written consent of the Board. The Board shall permit the placing of at least one (1) reasonable size and dignified form to identify the Project and the Condominium Units therein.

(g) **No Violation of Rules**: No Owner and no Owner's Guests shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Units, the use of Common Elements, or otherwise,

the same being subject to legal action for damages including but not limited to attorney's fees, costs of suit and equitable relief without bond.

(h) **Owner Caused Damages:** If, due to the act or neglect of an Owner or such Owner's Guests or family, loss or damage shall be caused to any Person or property, including the Project or any Unit therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorneys' fees) shall be secured by a Deed of Trust Lien on the Condominium Unit of such Owner as provided hereinabove for assessments or other charges. Each and every Owner becoming responsible and liable hereunder to the Association and/or any other Owner or Owners, hereby agree, to at all times hereafter, indemnify, defend and hold harmless the Association and any Owner or Owners suffering personal injuries or property damage due to the act or neglect of any such Owner or such Owner's Guest or family. This indemnity shall be fully enforceable in light of the Texas Express Negligence Rule pertaining to allegations of inappropriate conduct on the part of any indemnitee. This indemnity shall be applicable to any death, injuries, property damage, losses, costs, reasonable attorney's fees, reasonable expert fees and court cost incurred by any indemnitee.

(i) **Leasing of a Condominium Unit:** The Owner of a Condominium Unit shall have the right to lease his Condominium Unit under the following conditions:

- (i) No owner may lease less than his entire Condominium Unit;
- (ii) All leases shall be in writing;
- (iii) All leases shall provide that the terms of the lease and lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Second Amendment to Declaration and the First Amendment to Declaration and to the provisions of the Articles, Bylaws, and Rules and Regulations. Any failure by the lessee to comply therewith shall be a default under the lease for which each Owner shall be jointly and severally liable. Any owner who leases his Condominium Unit shall, within ten (10) days after the execution of such lease, forward a copy of the same to the Board or any Managing Agent; and

(iv) Except for a first Mortgagee in possession of a Condominium Unit following the default under its Mortgage or in connection with foreclosure proceedings or any deed or other arrangement in lieu of foreclosure proceedings by such first Mortgagee, no Owner may lease his Condominium Unit for transient or hotel purposes.

(j) **Parking of Vehicles:** Parking of any and all vehicles on the Project shall be subject to the rules and regulations of the Association.

(k) **Antennas and Signals:** No antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained in any Unit or upon the Common Elements, whether attached to the Building or otherwise, without the approval of the Board of Directors, except that the Declarant or the Association may erect a common television antenna.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 26 shall be made by the Board of Directors and shall be final.

27. **Association as Attorney-in-Fact - Destruction - Obsolescence.** This Second Amendment to Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact, coupled with an interest, to deal with the Project upon its destruction, repair or obsolescence.

Title to any Condominium Unit is hereby declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place and stead for the purpose of dealing with the Project upon its destruction, repair or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the merest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which it existed prior to the damage, with each Unit and the Common Elements and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. Except as is otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement unless all Owners and all first Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

Assessments for Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

(a) In the event of damage or destruction to the Project to the extent of not more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s).

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost of the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Such deficiency assessment shall be a Common Expense and made pro rata according to each Owner's interest in the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided hereinbefore. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and the proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (i) for payment of taxes and special assessment liens in favor of any taxing entity;
- (ii) for payment of the balance of the lien of any first Mortgage, unless agreed otherwise and without direct liability of the Association, its Board of Directors, Officers and/or any of their representatives, the Declarant and/or all non-defaulting Owners;
- (iii) for payment of assessments for Common Expenses due the Association;
- (iv) for payment of junior Mortgages and encumbrances in the order of and to the extent of their priority without liability of the Association, its Board of Directors, officers and/or any representatives and the Declarant and all other Owners; and

(v) the balance remaining, if any, shall be paid to the defaulting Owner.

(c) If the Project is damaged or destroyed to the extent of more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, and if all Owners do not voluntarily, within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each first Mortgage owned) the Condominium Project and Land shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Second Amendment to Declaration, the Map and the Articles, Bylaws and the Rules and Regulations. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's interest (as such interest appear, in accordance with each Owner's percentage or proportionate interest in the entire Condominium Project, including deeded Limited Common Elements) and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Unit and deeded limit. Each such account shall be in the name of the Association and the name(s) of the Owner(s), and shall be further identified by the Condominium Unit and as applicable deeded Limited Common Element designation and the name of said Owner(s). Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire Project. Such apportionment shall be based upon each Owner's percentage interest in the Condominium Project and Limited Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)(i) through (v) of this paragraph. The provisions contained in this subparagraph shall not hinder the protection given to a first Mortgagee under a mortgagee endorsement. Any such accounts established by the Association shall be at an institution of it's sole choice and, if possible bear interest at a rate negotiated by the Association, without any liabilities.

(d) If the Project is destroyed or damaged to the extent of more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, and if all Owners adopt, within one hundred (100) days thereafter, a plan for reconstruction, which plan must have the approval or consent of at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each first Mortgage owned), then all of the Owners shall be bound by the terms and other provisions of such plan. The Association shall have the right to use, in accordance with such plan, all proceeds of insurance for such destruction or damages, as well as the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Any assessment made in connection with such plan shall be a Common Expense and made pro-rata according to each Owner's percentage interest in the Common Elements and shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to

pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided hereinabove. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium Unit of any Owner refusing or failing to pay such assessment within the time provided, and the proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (b) (i) through (v) of this paragraph.

(e) The Owners representing an aggregate ownership interest of eighty-five percent (85%), or more, of the Common Elements may agree that the Condominium Units are obsolete and adopt a plan for the renewal and reconstruction, which plan shall have the approval or consent of at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each first Mortgage owned). If a plan for the renewal or reconstruction is adopted, the expenses thereof shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the adoption of such plan that his or its Condominium Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have fifteen (15) days within which to cancel such plan. If such plan is not cancelled then the Condominium Unit shall be purchased by the Association according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within sixty (60) days thereafter. If the parties are unable to agree, the date when either party notified the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned in this subparagraph shall be measured, within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If either party fails to make such a nomination, the appraiser nominated shall within five (5) days after default by the other party appoint and associate with him another independent appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another independent appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two independent appraisers and from the names of the four persons so nominated one shall be drawn by lot by any judge of any court of record in Texas and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, or as soon as practically possible, and the Association, as attorney-in-fact, shall disburse such proceeds as is provided in subparagraphs (b) (i) through (v) of this paragraph.



(f) The Owners representing an aggregate ownership interest of eighty-five percent (85%), or more, of the Common Elements may agree that the Condominium Units are obsolete and that the same should be sold. Such plan (agreement) must have the unanimous approval or consent of all first Mortgagees. In such instance, the Association shall, as attorney-in-fact for all of the Owners, sell the Project free and clear of the provisions contained in this Second Amendment to Declaration, the Articles and the Bylaws. The sales' proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit(s). Each such account shall be in the name of the Association and the perspective Owners, and shall be further identified by the Condominium account the Association, as [REDACTED] without any liability, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraphs (b) (i) through (v) of this paragraph.

28. **Condemnation.**

(a) **Consequences of Condemnation:** If at any time or times during the continuance of condominium ownership pursuant to this Second Amendment to Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Paragraph 28 shall apply.

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

(c) **Complete Taking:** In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, condominium ownership pursuant to this Second Amendment to Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Elements, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such share the same standard shall be employed to the extent it is relevant and applicable.

(d) **Partial Taking:** In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, and

other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to taking of, or injury to, the Common Elements shall be apportioned among the Owners in proportion to their respective undivided interests in the entire Condominium Project including the Deeded Limited Common Elements, (ii) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (iii) the respective amounts allocated to the taking of, or injury to, a particular Unit and/or improvements an Owner had made within his own Unit shall be apportioned to the particular Condominium Unit involved, and (iv) the amount allocated to consequential damages and any other takings or injuries shall be apportioned the same as above. If an allocation of the Condemnation Award is already established in negotiation, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Any distribution of the Condemnation Award, together with interest, pursuant to this subparagraph shall be made by checks payable jointly to the Owners and their first Mortgagees, if any.

(e) **Distribution**: The Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable, provided that in the event of a complete taking such distribution shall be made in the same manner as is provided in Paragraph 27(b) of this Second Amendment to Declaration.

(f) **Mortgage Notice**: The Association shall give timely notice to each first Mortgagee of the commencement of any condemnation or eminent domain proceedings and shall notify said first Mortgagees in the event of the taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds \$10,000.00.

(g) **Reorganization**: In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, and such Owner's interest in the Common Elements shall thereupon terminate, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the ownership and assessment ratio determined in accordance with this Second Amendment to Declaration according to the same principles employed in this Second Amendment to Declaration at its inception and shall submit such reallocation Owners and first Mortgagees, if any, of the remaining Condominium Units for amendment of this Second Amendment to Declaration as provided in Paragraph 29(b) hereof.

29. **Miscellaneous.**

(a) **Duration of Second Amendment to Declaration:** All of the provision contained in this Second Amendment to Declaration shall continue and remain in full force and effect until condominium ownership of the Project and this Second Amendment to Declaration are terminated, revoked, or amended as hereinafter provided.

(b) **Amendment and Termination:** Any provisions contained in this Second Amendment to Declaration may be amended, or additional provisions may be added to, this Second Amendment to Declaration and or this Declaration and condominium ownership of the Project may be terminated or revoked, by the recording or written instrument or instruments specifying the amendment or addition or the fact of termination and revocation, executed by the Owners of Condominium Units representing an aggregate ownership interest of seventy-five percent (75%), or more, of the entire Condominium Project including Deeded Limited Common Elements and first Mortgagees whose liens encumber an aggregate ownership interest of seventy-five percent (75%), or more of the Common Elements (except that no provision of this Second Amendment to Declaration requiring the approval or consent of more than seventy-five percent (75%) of such first Mortgagees may be amended without the consent of at least the minimum number of first Mortgagees whose approval or consent is required under such provision); provided, however, that in no event shall the undivided interest of an Owner in the entire Condominium Project including Deeded Limited Common Elements be decreased without the unanimous consent of each Owner and each first Mortgagee. The consent(s) of any junior Mortgagees shall not be required under the provisions of this paragraph. The Association shall at least ten (10) days prior to the effective date of any amendment to this Declaration notify all first Mortgagees of record of such amendment.

(c) **Effect of Provisions of Second Amendment to Declaration:** Each provision of this Second Amendment to Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Second Amendment to Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Second Amendment to Declaration shall:

- (i) be deemed incorporated in each deed or other instrument by which any right, title or interest in the Project or in any Condominium Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument;
- (ii) by virtue of acceptance of any right, title or interest in the Project or in any Condominium Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and, as a personal covenant, shall be binding on such Owner and such

Owner's heirs, personal representatives, successors and assigns, and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner;

- (iii) be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Condominium Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude running with the land for the benefit of the Project and each Condominium Unit;
- (iv) be deemed a covenant running with the land, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Project and each Condominium Unit in favor of the Association.

(d) **Supplemental to Law:** The provisions of this Second Amendment to Declaration shall be in addition and supplemental to the Texas Condominium Act and to all other provisions of law.

(e) **Numbers and Genders:** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

(f) **Registration by Owner of Mailing Address:** Each Owner shall register his mailing address with the Association and, except for routine notices which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address.

(g) **Successors and Assigns:** This Second Amendment to Declaration and the First Amendment to Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner, and their heirs, personal representatives, successors and assigns of each of them.

(h) **Severability:** Invalidity or unenforceability of any provision of this Second Amendment to Declaration and/or the First Amendment to Declaration in whole or in part, shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Second Amendment to Declaration and/or the First Amendment to Declaration.

(i) **Captions:** The captions and headings in this Second Amendment to Declaration are for convenience only and shall not be considered in construing any provision of this Second Amendment to Declaration.

(j) **No Waiver:** Failure to enforce any provision of this Second Amendment to Declaration and/or the First Amendment to Declaration shall not operate as a waiver of any such provision of this Second Amendment to Declaration and/or the First Amendment to Declaration.

(k) **Sales and Construction Facilities and Activities of Declarant:** Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of any construction on and sale of the Condominium Units in the Project, upon such portion of the Project as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Condominium Units, including without limitation, a business office, storage area, construction yards, signs, model Units, sales office, construction office, parking areas (other than Deed Limited Common Elements) and lighting and temporary parking facilities for all prospective tenants or purchasers of Condominium Units. In addition, Declarant, its agents, employees and contractors shall have the right to ingress and egress over the Common Elements as in Declarant's discretion may be necessary with regard to the foregoing. Further, Declarant, its agents, employees and contractors shall have the right to ingress and egress in and through all Units during any period of construction and/or sale of the Condominium Units for the purpose of any required or desired refurbishment, construction, maintenance or repair to such Units or the Building, or any part thereof.

30. **Recreational Facilities.** The recreational and guest facilities of the Project, which include a pool, balconies and foyers shall be subject to any rules and regulations promulgated by the Association, and same shall be available for the use of all Owners and their Guests, subject to the right of the Association to establish fees and charges for the use of same.

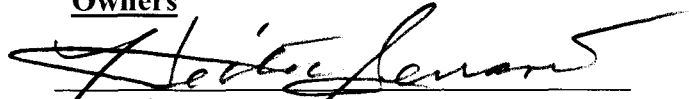
31. **New Additions of Common Elements.** The Declarant does not intend to make any major additions of Common Elements, and does not intend any expansion of the Project. If the Association would make any such additions, however, a) each Owner would be responsible for his percentage of any increase in Common Expenses created thereby, b) each Owner would own, as a tenant in common with the other Owners, an undivided interest in the new additions in accordance with the interests set forth on Exhibit "B" attached hereto, c) each Owner's interest in the existing Common Elements would be unaffected by such additions, and d) each Owner's voting powers in the Association would be unaffected by such additions.

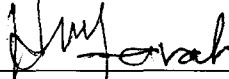
**"Declarant"**

HARRY M. FARAH & ASSOCIATES,  
INC., a Texas Corporation


By:   
Harry M. Farah, President


**"Owners"**


  
HECTOR SERRANO,  
Owner of Units #1 and 6

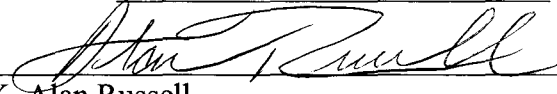
  
HARRY M. FARAH,  
Owner of A 2, A 5, A 10

SUN CITY AIR CONDITIONING, INC.

By:   
WILLIE HERNANDEZ, President  
Owner of #4

  
GLORIA ARMISTEAD,  
Owner of #7

  
W. J. ELLIS,  
Owner of UNIT 8

  
K. Alan Russell,  
Owner of # 10

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

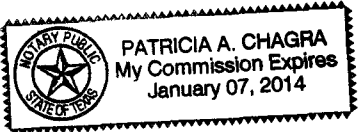
BEFORE, the undersigned authority, on this day personally appeared HARRY M. FARAH, President of HARRY M. FARAH & ASSOCIATES, INC., a Texas Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said HARRY M. FARAH & ASSOCIATES, INC., a Texas Corporation, and that he executed the same as the act of such Corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 26 day of May 26, 2011.

*Patricia A. Chagra*  
Notary Public in and for the State of Texas

Patricia A. Chagra  
Typed or printed name of Notary Public

My Commission Expires: 1-7-2014



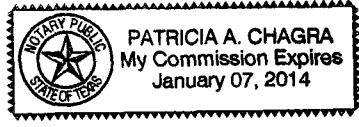
STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 26 day of May 26, 2011 by HECTOR SERRANO.

*Patricia A. Chagra*  
Notary Public in and for the State of Texas

PATRICIA A. Chagra  
Typed or printed name of Notary Public

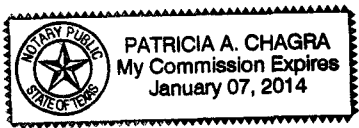
My Commission Expires: 1-7-2014



STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 26 day of May, 2011 by HARRY M. FARAH.

Patricia A. Chagra  
Notary Public in and for the State of Texas



Patricia A. Chagra  
Typed or printed name of Notary Public

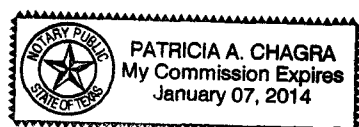
My Commission Expires: 1-7-2014

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

BEFORE, the undersigned authority, on this day personally appeared WILLIE HERNANDEZ, President of SUN CITY AIR CONDITIONING, INC., a Texas Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said SUN CITY AIR CONDITIONING, INC., a Texas Corporation, and that he executed the same as the act of such Corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 26 day of May, 2011.

Patricia A. Chagra  
Notary Public in and for the State of Texas



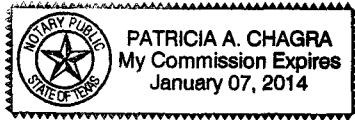
Patricia A. Chagra  
Typed or printed name of Notary Public

My Commission Expires: 1-7-2014



STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 29 day of May, 2011 by GLORIA ARMISTEAD.



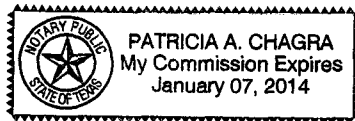
Patricia A. Chagra  
Notary Public in and for the State of Texas

Patricia A. Chagra  
Typed or printed name of Notary Public

My Commission Expires: 1-7-2014

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 26 day of May, 2011 by W. J. ELLIS.



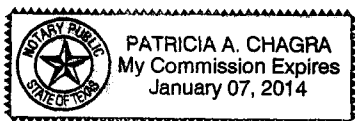
Patricia A. Chagra  
Notary Public in and for the State of Texas

Patricia A. Chagra  
Typed or printed name of Notary Public

My Commission Expires: 1-7-2014

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this 26 day of May, 2011 by K. ALAN RUSSELL.



Patricia A. Chagra  
Notary Public in and for the State of Texas

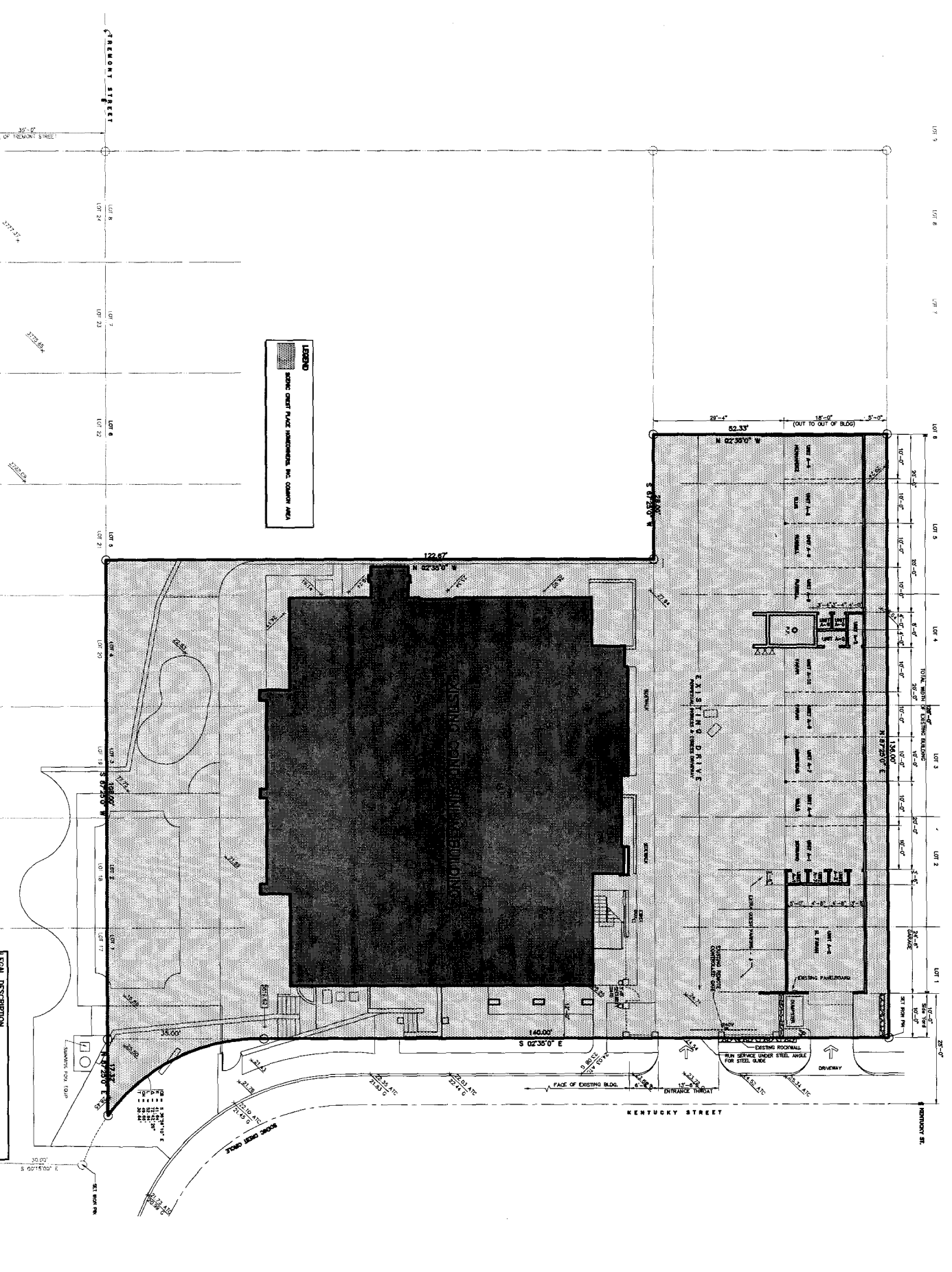
Patricia A. Chagra  
Typed or printed name of Notary Public

My Commission Expires: 1-7-2014



**EXHIBIT "A" INDICATING SCENIC CREST PLACE HOMEOWNERS, INC. COMMON AREA AND CARPORT DESIGNATION**

**LEGAL DESCRIPTION**  
 LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



**LEGEND**  
 SCENIC CREST PLACE HOMEOWNERS, INC. COMMON AREA

**HARRY M. FARAH & ASSOCIATES, INC.**  
**ARCHITECTS**



**A-1**

MEMBER OF THE AMERICAN INSTITUTE OF ARCHITECTS

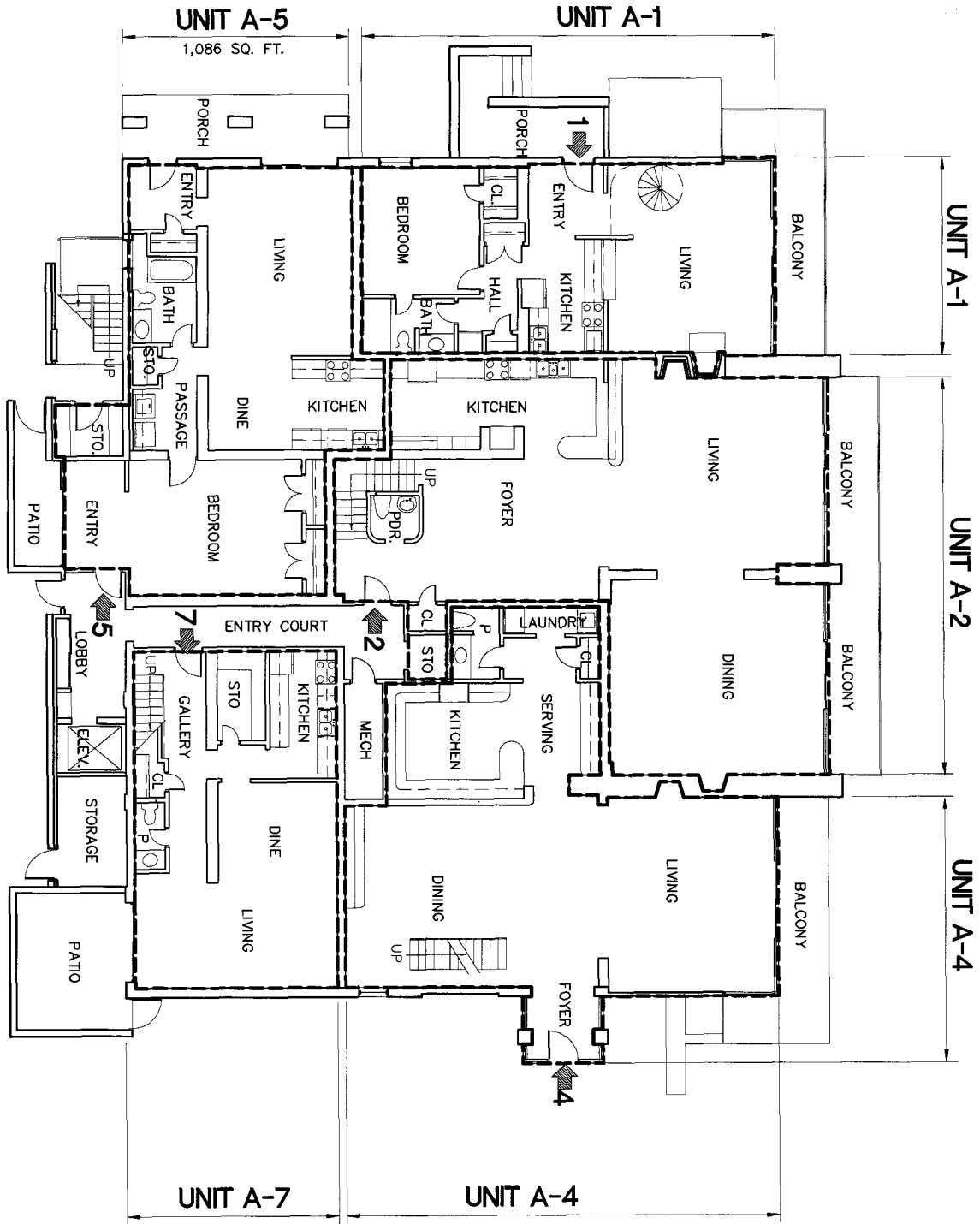
Exhibit "A" Indicating Scenic Crest Place Homeowners, Inc. Common Area & Carport & Garage Designation

2800 SCENIC CREST EL PASO TEXAS

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# FIRST FLOOR PLAN

SCALE: 3/32" = 1' - 0"



INDICATES COMMON AREAS

**AMD**  
2

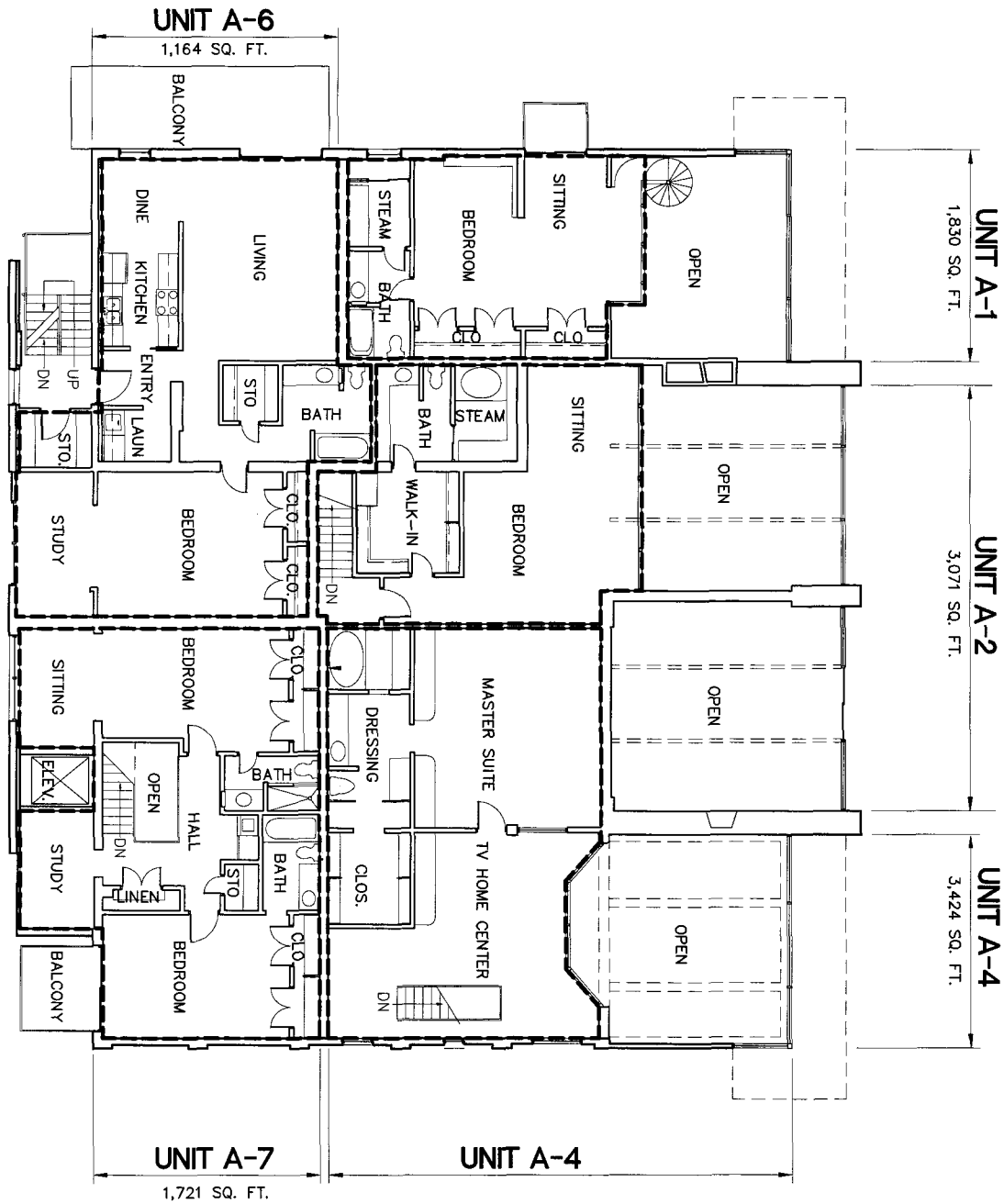
**HARRY M. FARAH & ASSOCIATES, INC.**  
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# SECOND FLOOR PLAN

SCALE: 3/32" = 1' - 0"



INDICATES COMMON AREAS

**AMD**  
3

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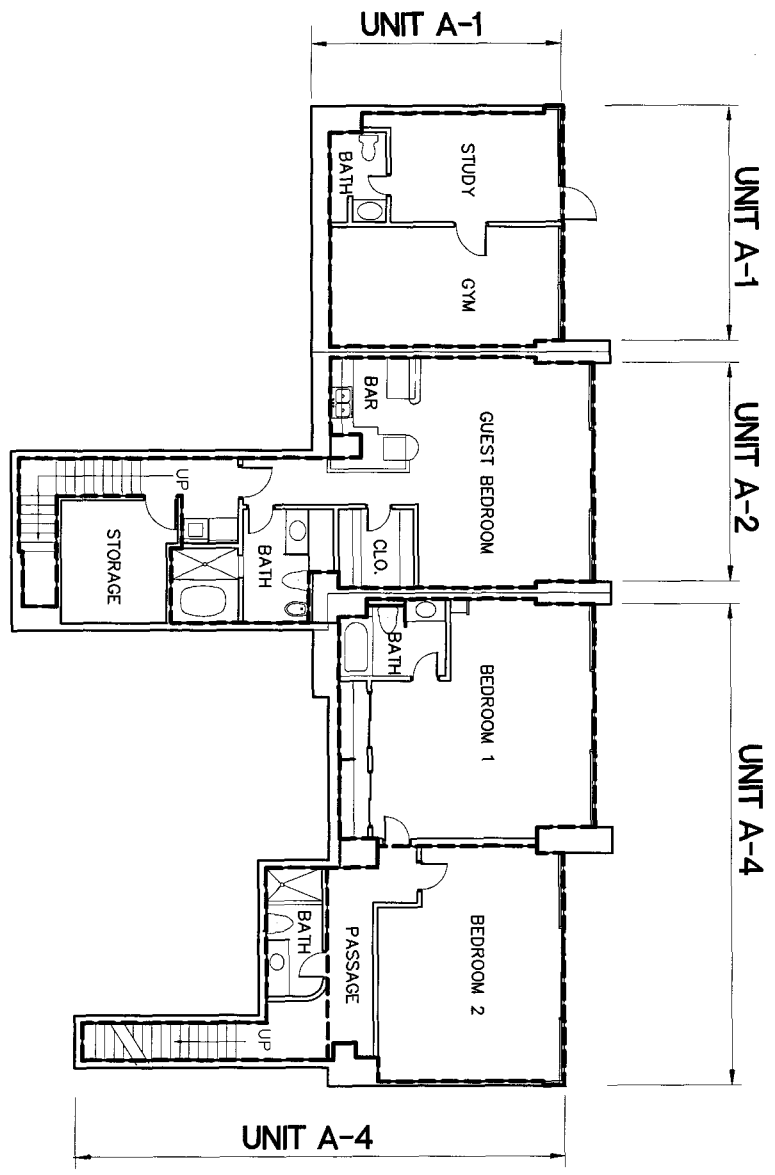
2500 SCENIC CREST PLACE

2600 SCENIC CREST  
EL PASO, TEXAS

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# SUBSTREET FLOOR PLAN

SCALE: 3/32" = 1' - 0"

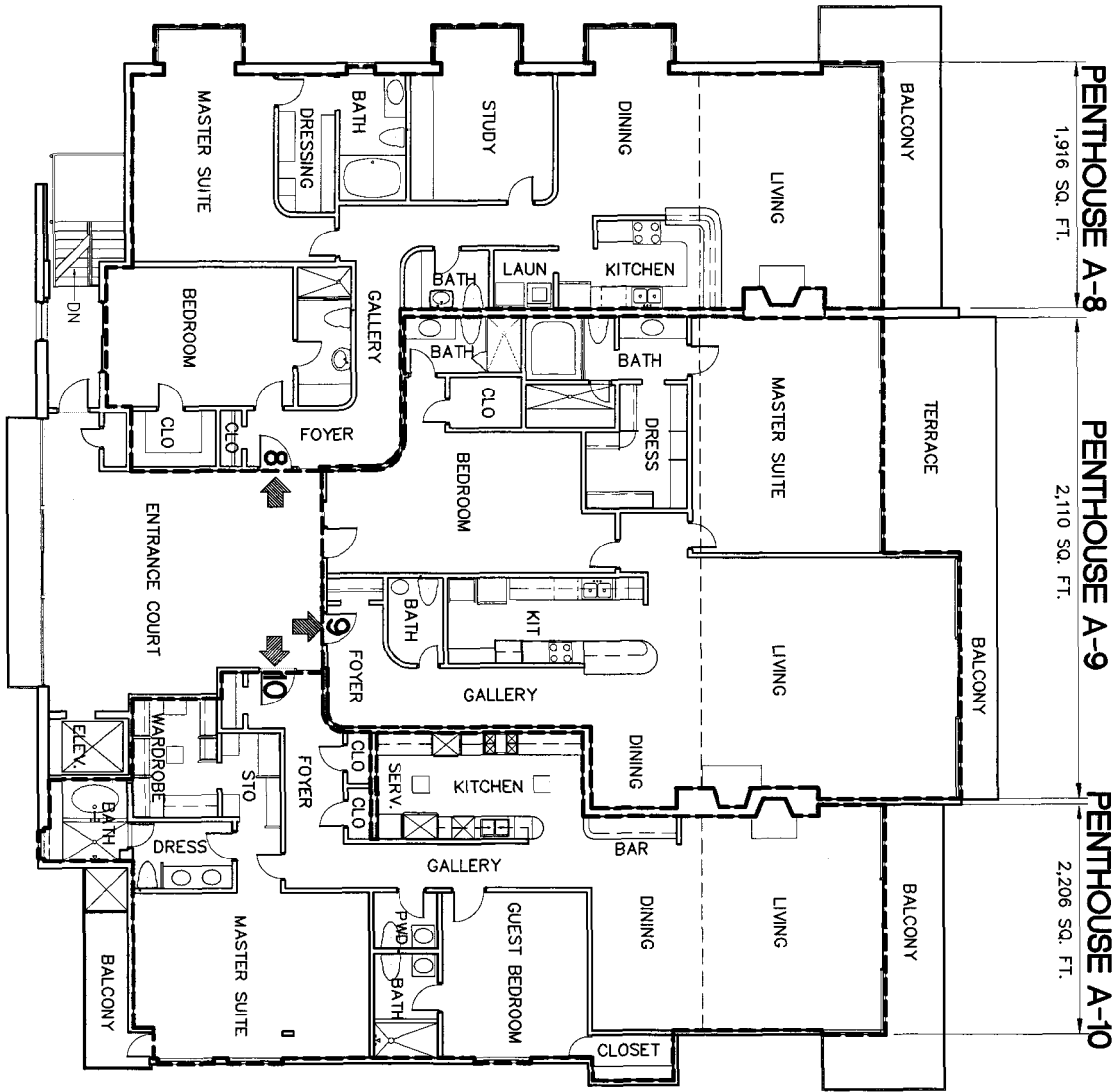


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	LICENSE NO. 2721 STATE OF TEXAS	MEMBER OF THE AMERICAN INSTITUTE OF ARCHITECTS	2500 SCENIC CREST PLACE EL PASO TEXAS

# THIRD FLOOR PLAN

SCALE: 3/32" = 1' - 0"



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		MEMBER OF THE AMERICAN INSTITUTE OF ARCHITECTS	2500 SCENIC CREST PLACE	

**EXHIBIT "B"**  
**TO**  
**SECOND AMENDMENT TO DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**SCENIC CREST PLACE CONDOMINIUMS**

<b>"OWNER"</b>	<b>"GARAGE UNIT"</b>
HARRY M. FARAH	Units "2" Consisting of six separate Garage Units designated on Exhibit "A", Page A-1 as "Farah 2"; and "Unit-2 Farah"
K. ALAN RUSSELL	Unit "9" Consisting of two separate Garage Units designated on Exhibit "A", Page A-1 as "Unit-9 Russell"
SUN CITY AIR CONDITIONING, INC.	Unit "4" on Exhibit "A", Page A-1
W. B. ELLIS	Unit "8" on Exhibit "A", Page A-1
GLORIA ARMISTEAD	Unit "7" on Exhibit "A", Page A-1
HECTOR SERRANO	Unit "1" on Exhibit "A", Page A-1

Doc# 20110068736  
#Pages 47 #NFPages 1  
10/3/2011 4:32:23 PM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$195.50  
RA 48

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



*Delia Briones*

EL PASO COUNTY, TEXAS