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ENABLING DECLARATION AND MASTER DEED FOR THE ESTABLISHMENT OF A CONDOMINIUM REGIME FOR THE BANK OF KERRVILLE TOWER CONDOMINIUMS KERR COUNTY, TEXAS

THIS DECLARATION CONTAINS PROVISIONS FOR BINDING ARBITRATION UNDER ARTICLE 224 OF THE TEXAS REVISED CIVIL STATUTES

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Exhibits

Exhibit A. Map or Condominium Plan

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ENABLING DECLARATION AND MASTER DEED FOR THE ESTABLISHMENT OF A CONDOMINIUM REGIME FOR THE BANK OF KERRVILLE TOWER CONDOMINIUMS KERR COUNTY, TEXAS

THIS ENABLING DECLARATION AND MASTER DEED FOR THE ESTABLISHMENT OF A CONDOMINIUM REGIME FOR THE BANK OF KERRVILLE TOWER CONDOMINIUMS ("Declaration"), made on the date hereinafter set forth, by E. B. Roberts Construction Company, a Texas corporation ("Declarant"), is made with reference to the following facts:

A. Declarant is the owner of certain real property located in the City of Kerrville, County of Kerr, State of Texas, more particularly described as follows to-wit:

(1) 3.1 acres (134,820 square feet) of land, the same being all of Lot 5 of Riverhills Mall, a subdivision of Kerrville, Kerr County, Texas, according to the plat thereof recorded in Volume 4, Page 185, Plat Records of Kerr County, Texas, to which instrument and its record reference is here made for all purposes; and

(2) the non-exclusive easement, license, right and privilege for ingress, egress and parking over and across all of Lots One (1), Two (2) and Three (3), Block One (1), River Hills Mall, as shown on Plat appearing of record in Volume 4, Pages 185-186, Plat Records of Kerr County, Texas, for the benefit of Lot Five (5), Block One (1), River Hills Mall, as shown on the Plat appearing of record in Volume 4, Pages 185-186 of the Plat Records of Kerr County, Texas, together with an easement ten (10) feet in width over and under all of Lots One (1), Two (2) and Three (3), Block One (1), Riverhills Mall shown on the plat above described, not from time to time improved with buildings, for construction, operation, maintenance of a pneumatic tube or tubes (hereinafter called "tubes"), and together with the right and privilege to reconstruct, inspect, alter, remove and relocate such tubes, provided that Grantee, its successors and assigns shall exercise such easement rights so as to cause the least possible interference with the operation of the businesses located on said Lots One (1), Two (2) and Three (3), Block One (1), River Hills Mall as described above, and being the same and identical easements appurtenant reserved in that certain deed dated July 15, 1981, from C & W Manhattan Associates, a Texas Limited Partnership, to E & H Properties, Inc., a Pennsylvania Corporation, recorded in Volume 250, Page 652, Deed Records of Kerr County, Texas, to which instrument and its record reference is here made for all purposes ("Property").

B. The Property consists of the land above described and is sometimes referred to as the "Project" or the "Condominiums".

C. Declarant desires to establish a condominium regime under the Texas Condominium Act. Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the area or space contained in each of the office units, and the co-ownership by the individual and separate owners thereof, as tenants in common of the remaining portion of the Project. Each office unit shall have appurtenant to it a membership in BANK OF KERRVILLE TOWER OWNERS ASSOCIATION, INC.

D. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvements for the benefit of all said office units and the owners thereof.

Declarant does hereby establish Bank of Kerrville Tower Condominiums as a condominium regime under the Texas Condominium Act and hereby declares that the office units within the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project and every part thereof. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE I

DEFINITIONS

1.01. "Articles" shall mean and refer to the Articles of Incorporation of the Association as the same may be amended from time to time.

1.02. "Assessment" shall mean the assessment made and levied against each Owner and each Owner's Unit for that portion of the cost of maintaining, improving, repairing, operating and managing the Condominiums and for repair, maintenance and operation of the Common Elements, including reserves for replacements, which is to be paid by each Owner as determined by the Association in accordance with this Declaration and the Bylaws.

1.03. "Association" shall mean and refer to the BANK OF KERRVILLE TOWER OWNERS ASSOCIATION, INC., its successors and assigns, a non-profit corporation organized pursuant to the Texas Non-profit Corporation Act, of which the Owners shall all be Members. The term "Association" shall have the same meaning as the term "Council of Co-owners" in the Texas Condominium Act.

1.04. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.05. "Building" shall mean the structure erected or to be erected on the Property containing the Units, and more fully identified on the "Map".

1.06. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.07. "Common Elements" shall mean and refer to both the General and Limited Common Elements described herein.

1.08. "Common Expenses" shall mean and include:

(a) All sums lawfully assessed with respect to or in connection with the Common Elements by the Board;

(b) Expenses of administration and management, maintenance, repair or replacement of the Common Elements, as provided herein, including a reasonable reserve for such purposes;

(c) Expenses agreed upon as Common Expenses by the Owners; and

(d) All sums designated as Common Expenses by or pursuant to the Project Documents.

1.09. "Common Interest" means the proportionate undivided interest in the Common Elements which is appurtenant to each Unit as set forth in this Declaration.

1.10. "Condominium", "Office", "Office Unit" or "Unit" shall mean one individual unit, together with an undivided interest in the Common Elements. The terms "Condominium", "Office", "Office Unit" or "Unit" shall have the same meaning as the term "apartment" as used in the Texas Condominium Act.

1.11. "Declarant" shall mean and refer to E. B. Roberts Construction Company, a Texas corporation, and its successors-in-interest and assigns, provided that each such successor or assign is designated in writing by Declarant as a successor or assign of the rights of Declarant hereunder.

1.12. "Declaration" shall mean and refer to this Enabling Declaration and Master Deed.

1.13. "General Common Elements" shall mean and include the Property, the Building and all other improvements thereon, except the Office Units and Limited Common Elements, and shall include, without limiting the generality of the foregoing:

(a) To the extent not otherwise designated as Limited Common Elements, the foundations, common dividing walls between two or more Units or between Units and Common Elements, exterior walls, bearing walls and columns (including any windows and doors), girders, beams, slabs, supports, roofs, attics, ceilings and floors, halls, or thoroughfares such as stairways, entrances, exits or communication ways and any other portion of the Building;

(b) The grounds, yards, gardens, managerial offices, mail rooms, driveways, fences, unassigned storage areas, streets, service drives, walks, service easements, mechanical rooms, and areas used for storage of maintenance and janitorial equipment and materials, if any;

(c) The installations consisting of the equipment and materials making up central services such as power, electricity, gas, water, sewer, television, hot water, and the like which are intended to serve more than one

Unit, and all elevators, elevator shafts, machinery and equipment related thereto;

(d) Parking areas; provided, however, that the Board of Directors, at any time and from time to time shall have the right and power to assign and to reassign parking spaces shown on page one (1) of the Map to Owners; and provided further, that page one (1) of the Map attached hereto may be amended by the Board of Directors without the consent of any Owner for the purpose of designating any such parking space with a number corresponding to an Office Unit number, and thereafter such parking space shall be a Limited Common Element appurtenant to such Office Unit, subject to the right to reassign granted herein, provided, further, however, the basement parking area shown on page two (2) of the map is excluded as general common elements and is designated limited common elements;

(e) All other structures, facilities, equipment, and property located on the Project necessary or convenient to its existence, maintenance, operation and safety, or normally in common use; and

(f) All repairs, replacements and additions to any of the foregoing.

1.14. "Limited Common Elements" shall mean those Common Elements reserved for the use of a specified Unit or Units to the exclusion of others, or serving exclusively one or more specified Units, the enjoyment, benefit or use of which is reserved to the lawful occupants of said Unit or Units either in this Declaration, or as indicated on the Map as the same may be amended from time to time, including by way of example, but not limited to parking spaces once assigned and designated with a Unit number in accordance with Section 1.13(d) hereof, subject to the right to reassign granted therein; and entrances, stairways and storage areas, if any, indicated on the Map as Limited Common Elements appurtenant to a specified Unit or Units.

1.15. "Map" or "Condominium Plan" shall mean and refer to the engineering survey of the Property which is attached hereto as Exhibit "A" and by this reference made a part hereof, as the same may be amended from time to time as herein provided. The Map sets forth, among other things, a survey of the Property showing the location of the Building, a general description and plat of each Unit showing its square footage, location, floor and Unit number and a general description of the Common Elements. In interpreting the Map, the existing physical boundaries of each Unit shall be conclusively presumed to be its boundaries. Declarant reserves unto itself the right, so long as Declarant owns one or more Units, to amend the Map and amendments thereto, to conform same to the actual location of any of the improvements, to establish, vacate and relocate easements, access road easements, and parking spaces, to establish certain General Common Elements not theretofore established, to establish certain General Common Elements as Limited Common Elements, and to show such other changes that Declarant may make in accordance with the terms of this Declaration.

1.16. "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.17. "Mortgage" or "Deed of Trust" shall mean a first lien interest in a Unit given to a creditor as security for repayment of a loan made to the Unit Owner, said interest to be evidenced by an instrument duly and properly recorded in the Deed of Trust Records of Kerr County, Texas.

1.18. "Mortgagee" shall mean the beneficiary of a holder of any first lien Deed of Trust or Mortgage.

1.19. "Owner" or "Owners" shall mean and refer to the record holder or holders of fee simple title of a Unit in the Project, but shall not exclude Persons having any interest in a Unit merely as security for the performance of any obligation. An Owner may be a person, firm, corporation, partnership, association, trustee or other legal entity, or any combination thereof.

1.20. "Person" means a natural person, firm, corporation, partnership, association, trustee, or other legal entity.

1.21. "Project Documents" shall mean and include this Declaration and the exhibits attached hereto, the Articles and Bylaws of the Association and the rules and regulations for the Members, as the same may be established and/or amended from time to time.

1.22. "Texas Condominium Act" or "Act" shall mean Article 1301a of the Texas Revised Civil Statutes, enacted in 1963, which permits the creation of condominium regimes, as the same is amended or supplemented in any successor statute.

ARTICLE II

DIVISION OF PROJECT AND CREATION OF PROPERTY RIGHTS

2.01. Division of Project. The Project is hereby divided into the following freehold estates and areas:

(a) Units. Twenty-eight (28) fee simple estates consisting of twenty-eight (28) separately designated Office Units, each such Unit identified by a separate number on the Map. Each Office Unit may be held and owned by two or more Persons as joint tenants or as tenants in common or in any real property tenancy relationship recognized under the laws of the State of Texas.

(b) Basement Parking Places. Twenty-seven (27) parking spaces consisting of twenty-seven (27) separately designated parking spaces located in the basement garage, each such parking space identified by a separate number on the Map. The exclusive privilege to park in a designated parking space shown on page two (2) of the Map is declared to be a Limited Common Element appurtenant to the following designated Office Units, subject however to the option of the Bank of Kerrville to acquire from the Office Unit Owners the following designated parking spaces, to-wit B.10, B.24, B.20, B.21, B.14 and B.27 as provided in Section 8.17. The exclusive right to use for vehicle parking purposes the twenty-seven (27) basement parking spaces are assigned by Declarant to the owners as being appurtenant to such owner's Office Unit as follows, to-wit:

Designated Parking Space	Appurtenant to Office Unit(s)
B.1, B.2, B.3, B.4, B.5, B.6, B.7, B.8, B.9, B.11, B.12, B.13, B.15, B.16, B.17, B.18, B.19, B.22, B.23, B.25, B.26	1.1, 2.1, and 2.2

B.10 5.1
B.24 5.4
B.20 5.5
B.21 5.6
B.14 6.2
B.27 6.6

All designated basement parking spaces herein assigned to or hereinafter acquired by the Bank of Kerrville shall be appurtenant to its Office Units and the Bank of Kerrville shall have the right from time to time to designate the use thereof to its officers, directors, employees, invitees, agents and others and such exclusive privilege to park in place may be made with or without making a charge therefore at the sole discretion of the Bank of Kerrville, its successors or assigns. The Board of Directors shall not have the right or power to assign or reassign the exclusive privilege to park in a designated parking space in the basement garage notwithstanding anything to the contrary provided for in Sections 1.13(d), 1.14, 2.04 and 2.05 of this Declaration.

(c) Banking Facilities. Exclusive right and use of drive-in banking facilities, including but not limited to exclusive right to construct, reconstruct, maintain and operate a pneumatic tube or tubes in connection with such banking operations. The exclusive right to use of the said banking facilities are assigned by Declarant to the Owner as being appurtenant to Office Units 1.1, 2.1 and 2.2.

(d) Common Elements. The remaining portion of the Project, referred to as the Common Elements, shall be owned in common by the Owners. The percentage ownership interest in the Common Elements assigned to each Office Unit is based upon the approximate size of each Office Unit in relation to the others, and such percentage shall be determinative of the proportionate share of each respective Owner in the Common Elements, the Common Expenses of the Association and the value of such Owner's vote at meetings of the Association. The total value of all of the ownership interests is 100%. Set forth in Exhibit "B" attached hereto and incorporated herein by reference is the number of each Office Unit as the same appear on the Map and percentage of value assigned to each Office Unit.

2.02. The Units. In determining the dimensions of and area contained within each Unit, the enclosed space within a Unit shall be measured from interior finished, unpainted surfaces of the perimeter walls, floors and ceilings, and the Unit shall include the airspace so encompassed. Included in each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the common exterior walls or interior walls, floors or ceilings (such as, but without limitation, paint, wallpaper, vinyl wall or floor covering, carpet and tile). The boundaries of each Unit shall be the interior surface of the perimeter walls, floors, ceilings, windows and doors. Interior trim around windows and doors shall be a part of each Unit and shall not be a part of the Common Elements. Except as provided herein for undivided percentage ownership of the Common Elements, the Unit does not include Common Elements. It is expressly stipulated, and each and every purchaser of a Unit, and such purchaser's, heirs, executors, administrators, successors and assigns hereby agree that the square footage, size and dimensions of each Unit, as set out and shown in this Declaration or on the Condominium Plan are

approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimensions shown therein. Each purchaser and Owner of a Unit, or interest therein, has had full opportunity and is under a duty to inspect and examine the Unit purchased by such purchaser and Owner prior to the purchase thereof, and agrees that the Unit is purchased as actually and physically existing. Each purchaser of a Unit hereby expressly waives any claim or demand against the Declarant or other seller of such Unit on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the Condominium Plan. Each Unit is subject to such encroachments and protrusions as are contained in the Building, whether the same now exist or may be later caused or created in any manner. In interpreting deeds and the Condominium Plan, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling, rising or lateral movement of the Building and regardless of minor variance between boundaries shown on the Condominium Plan or deed, and those of the Building.

2.03. The Common Elements. The "Common Elements," shall include all of the elements set forth in Section 1.07. Each Owner shall have as an appurtenance to such Owner's Unit, an undivided percentage interest in the Common Elements, based upon the approximate size of such Owner's Unit in relation to the others, as set forth in Exhibit "B" attached hereto. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered once sold by Declarant without the consent of all the Owners of said Units and the Mortgagees of such Owners as expressed in an amended Declaration, except as provided in Sections 2.06, 2.07, 8.05(c)(ii) and 8.17. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner shall have a non-exclusive right to use the General Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Owners. Notwithstanding the transfer of the ownership of the Common Elements to the Owners as tenants in common, the Declarant shall reserve and hereby reserves unto itself and to the Association or its designated agents an easement over and onto the Common Elements for Common driveway purposes, for drainage and encroachment purposes and for ingress and egress from the Common Elements for the purpose of completing improvements thereon and for the performance of necessary repair work. Declarant further reserves unto itself and to the Association or its designated agents the right to establish easements, reservations, exceptions and exclusions consistent with the ownership of the Project and for the best interest of the Owners and the Association in order to serve the entire Project.

2.04. The Limited Common Elements. The Limited Common Elements shall be identified herein or on the Map, as amended from time to time, and designated as appurtenant to a particular Unit or Units. The rights of an individual Owner in the Limited Common Elements shall consist of (a) an exclusive easement to use for vehicle parking purposes, the parking space or spaces specifically originally assigned or reassigned by Declarant or the Association to the Owner as being appurtenant to such Owner's Unit, if any; (b) an exclusive easement to use such other areas and facilities as may be designated in this Declaration and on the Map, as same may be amended from time to time.

2.05. No Separate Conveyance of Undivided Interests. The foregoing interest and exclusive easements are hereby established and are to be conveyed only with the respective Units, and cannot be changed, except as herein set forth. Declarant and each Owner covenant and agree that the undivided interests in the Common Elements, the exclusive easements of the Limited Common Elements, and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, except as set forth in this Declaration, and each such undivided interest and exclusive easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

2.06. Partition Prohibited. The Common Elements shall remain undivided as set forth above so long as suitable for a condominium regime. Except as provided by the Texas Condominium Act, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby but partition of title to a single Unit is prohibited. Notwithstanding the provisions of this Section 2.06, until all of the Units are conveyed by Declarant to third parties, Declarant has the right to:

(a) physically combine the space within one Unit with the space within one or more adjoining Units, to redetermine the Common Interest of the Units so combined and to amend the Declaration and Map to include said changes;

(b) physically combine part of or a combination of parts of the space within one Unit with part or parts of space within one or more adjoining Units, to redetermine the Common Interest of the Units so combined and to amend the Declaration and Map to include said changes;

(c) partition or subdivide any Unit owned by Declarant into two or more Units, Common Elements, or a combination of Units and Common Elements, to redetermine the Common Interest of those Units so partitioned or subdivided, and, if applicable, of all other Units, and to amend the Declaration and Map to include said changes; and

(d) modify or remodel one or more Units into larger or smaller Units or any combination thereof, to construct, alter, relocate or remove any walls or do any other work which may be necessary to complete such modification or remodeling, to redetermine the Common Interest of the Units altered, if any, and to amend the Declaration to include said changes.

2.07. Alteration of Boundaries of Office Units. If one Person is the Owner of all or part of two (2) Units which are adjoining, whether adjoining vertically (above and below each other) or horizontally (on the same floor of the Building) or if two (2) Owners of adjoining Units so agree, then such Owner or Owners shall have the right to remove all or any part of any intervening partition or floor or to create doorways or other openings in such partition or floor, notwithstanding the fact that such partition or floor may in whole or in part be a Common

Element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any Common Element other than that partition is damaged, destroyed or endangered. In any of such events, the Owner or Owners involved, at their expense, may relocate the boundaries between adjoining Units by causing an appropriate instrument of amendment to this Declaration to be prepared and executed by such Owners, which instrument shall also be executed by the President of the Association and recorded. The instrument of amendment (i) shall show the boundaries between those Units which are being relocated, (ii) shall recite the occurrence of any conveyancing between the Owners of such adjacent Units, and (iii) shall specify any reasonable reallocation as agreed upon between the Owners of the Units involved of the aggregate Ownership interests in the Common Elements pertaining to those Units. Such plats and floor plans as may be necessary to show the altered boundaries between the Units involved shall be certified as to their accuracy by a registered surveyor or engineer.

2.08. Separate Assessment and Taxation. The filing of this Declaration shall be deemed to be written notice of the applicable tax assessors of the creation of condominium ownership of the Property, the Building and all other improvements thereon, and each Condominium Unit shall be deemed a separate parcel and subject to separate assessment and taxation.

ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.01. Association to Manage Common Elements. The management of the Common Elements shall be vested in the Association in accordance with the terms of this Declaration and the Bylaws. The Bylaws shall be deemed adopted by Declarant as the sole owner of the Project, and the Owners of the Units and all holders of liens thereon shall be bound thereby. The Owners of all the Units covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles and the Bylaws, subject to the standards set forth in this Declaration and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project or the Association, as same may be amended from time to time.

3.02. Membership. Any Person, upon becoming an Owner of a Unit, shall automatically be a Member of the Association, and shall remain a Member thereof in accordance with the Articles and the Bylaws until such time as his ownership of said Unit ceases for any reason, at which time such Person's membership in the Association shall automatically cease.

3.03. Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in such Owner's name to the purchaser of such Owner's Unit, the Association shall have the right to record the transfer upon its books.

3.04. Voting Rights. The Owner of Owners of each Unit shall be entitled to one vote, the value of which shall equal the Common Interest assigned to said Owner's or Owners' Unit as set forth in Exhibit "B" hereto.

3.05. Board of Directors. The affairs of the Association shall be managed by The Board of Directors. The Initial Board of Directors shall serve until the expiration of two (2) years from the date of the first conveyance of a Condominium Unit or until ninety-five percent (95%) of the Condominium Units have been sold by Declarant, whichever occurs first; which period is hereinafter sometime referred to as the "Sale and Development Period." Nothing contained in this section, however, shall be construed to prevent the initial Board of Directors from calling the first annual meeting of the Association at an earlier time and relinquishing the control and responsibility for the administration and management of the project to a newly elected Board of Directors prior to the end of the Sale and Development Period.

ARTICLE IV

MAINTENANCE AND ASSESSMENTS

4.01. Personal Obligation of Assessments. Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed, as a part of the purchase money consideration for such deed and conveyance, to covenant and agree to pay to the Association: (1) regular monthly Assessments or charges, and (2) special Assessments for capital improvements and unexpected expenses, such Assessments to be established and collected as provided herein in the Bylaws and in the Rules and Regulations of the Association. No Owner of a Unit may be exempted from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of such Owner's Unit.

4.02. Purposes of Assessments. The Assessments levied by the Association shall be used to promote the common purposes of the Owners, to provide for the improvement and maintenance of the Common Elements for the common good of the Project, to pay utility expenses which are not separately billed or metered to the Units, and generally for doing those things necessary or desirable in the opinion of the Board to maintain or improve the Project. Any expenses incurred for such purposes shall be deemed to be Common Expenses, and the Board may use the Assessments to defray the Common Expenses, including, without limitation, any expense incurred in providing for the enforcement of the provisions of this Declaration, the Bylaws and any Rules and Regulations promulgated by the Board thereunder. The decision of the Board with respect to such expenditures shall be final so long as made in good faith. The monthly Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Elements. The Limited Common Elements shall be maintained by the Association, and Owners having exclusive use thereof shall not be subject to any special charges or Assessments for the repair or maintenance thereof except as otherwise provided in the Bylaws and herein, including, but not limited to, Section 5.02 hereof.

4.03. Regular Monthly Assessments and Creation of Lien. All Owners shall be obligated to pay the Assessments imposed by the Board of Directors of the Association. The total amount of the estimated funds required from Assessments to operate the Project for each fiscal year shall be set forth in a budget adopted by the Board of Directors and shall be assessed against each Owner in proportion to the Common Interest of such Owner as set forth herein, said figure to be divided by twelve (12) to determine the regular monthly Assessment; provided, however, that the Board of Directors may from time to time and at any time

amend or modify any budget previously adopted for any fiscal year of the Association and may modify the Assessments accordingly; and provided, further, that any Assessment may be rounded off to the nearest dollar figure. The Assessments shall be secured by a lien against said Unit, subject to the provisions hereof. Declarant hereby reserves and assigns to the Association, without recourse, a vendor's lien against each Unit to secure the payment of any monthly or special Assessment which may be levied pursuant to the terms hereof, and the expenses incurred in connection with the enforcement thereof, including, without limitation, interest at the rate provided in Section 4.05, costs and reasonable attorneys' fees. Said liens may be enforced by appropriate judicial proceedings, and the amounts secured thereby shall be the obligation of and chargeable to the Owner in default. Any such lien shall be and is subordinate and inferior only to the following: (i) assessments, liens and charges in favor of the State of Texas and any political subdivision thereof for taxes past due and unpaid on such Unit; and (ii) amounts due under any first lien Mortgage instruments duly recorded prior to the recordation of any lien assessment as provided in Section 4.05. The ommission or failure of the Board to fix the Assessment for any month shall not be deemed a waiver, modification, or release of th Owner's obligation to pay.

4.04. Special Assessments. In addition to the regular monthly Assessments authorized above, the Board may levy, in any year, one or more special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements upon the Common Elements, including fixtures and personal property related thereto, or to defray an unanticipated or underestimated expense or other action or undertaking normally covered by the monthly Assessments (and, where necessary, for taxes assessed against the Common Elements or the Project as a whole). Said special Assessments shall be assessed against each Owner in proportion to the Common Interest of such Owner as set forth herein. Special Assessments may also be levied against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and such Owner's Unit into compliance with the provisions of this Declaration and the Bylaws, including actual attorneys' fees and court costs. Said special Assessments may be subject to such limitations as are provided in the Bylaws.

4.05. Assessment Lien. All sums assessed but unpaid for the share of Assessments (whether monthly or special) chargeable to any Unit, including interest thereon at the maximum rate permitted by law (or, if there is not such maximum rate, then at the rate of two percent per month) from the date such Assessments are due until said Assessments are paid, subject to the provisions hereof limiting the interest contracted for, charged or received to the maximum permitted by applicable law, shall constitute a lien on such Unit superior to all other liens and encumbrances, except as provided in Section 4.03. The Board of Directors or a managing agent appointed by the Board ("Managing Agent") may but shall not be required to prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed by one of the members of the Board of Directors or by one of the officers of the Association or by a representative of the Managing Agent and may be recorded in the office of the County Clerk of Kerr County, Texas. Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association in like manner as a mortgage on real property subsequent to the recording of a notice provided for above. In

any such proceeding, the Owner shall be required to pay the costs, expenses and attorney's fees incurred in connection with filing the lien, and in the event of any foreclosure proceeding all additional costs, expenses and attorney's fees incurred in connection with any such foreclosure proceeding. The Owner of the Unit being foreclosed shall be required to pay to the Association the monthly Assessment for the Unit during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to bid on the Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any Mortgagee holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Assessments owing with respect to such Unit, but such payment shall not be deemed a waiver of the Owner's default by either the Association or such Mortgagee. The amount of the Common Expenses assessed against each Unit shall also be a debt of the Owner thereof at the time the Assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same. Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 51.002 of the Texas Property Code, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also, in accordance with the Bylaws, temporarily suspend the Association membership rights of any Owner who is in default in payment of any Assessment.

4.06. Date of Commencement of Assessment; Due Dates. The regular monthly Assessments provided for therein shall commence as to all Units in the Project on the first day of the month following the coveyance by deed of the first Unit in the Project. The due dates of regular monthly Assessments shall be the first day of each and every subsequent calendar month. No notice of such Assessments or the due dates thereof shall be required other than an annual notice setting forth the amount of the regular monthly Assessments. The due date of any special Assessment shall be the due date specified by the Association in the notice of such special Assessment delivered by the Association to each Owner; provided, however, such due date shall in no event be less than thirty (30) days subsequent to the date of such notice.

(41)

-nth day of the month for which the assessment is made.

4.07. Transfer of Unit by Sale or Foreclosure. Sale or transfer of any Unit shall not affect the Assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a Mortgage, or by deed or other transfer in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer (except for Assessments which became due prior to the recordation of such Mortgage). No such sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof. When any Mortgagee of a Mortgage obtains title to a Unit as a result of foreclosure of such Mortgage, or by a deed or other conveyance in lieu thereof, such Mortgagee shall not be liable for the unpaid dues or charges of the Association chargeable to such Unit which accrued subsequent to the recordation of such Mortgage and prior to the acquisition of title to such Unit by such Mortgagee. Such unpaid dues or charges shall be deemed to be Common Expenses collectible from all of the Units including the Unit acquired by such Mortgagee. In a voluntary conveyance

of a Unit (other than a deed or conveyance to a Mortgagee in lieu of foreclosure), the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the grantor for the grantor's share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that any such grantee, upon payment to the Association of a reasonable fee and upon written request, shall be entitled to a statement from the Association, setting forth the amount of any unpaid Assessments then due and owing to the Association with respect to the Unit being purchased, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement and applicable to a period of time prior to the date of such statement. The grantee shall, however, be liable for any such Assessments becoming due after the date of any such statement.

4.08. Separate Taxation. Each Unit, together with its Common Interest, shall be deemed to be a separate and distinct entity for the purpose of the assessment and collection of taxes, assessments and other charges of this state, or of any political subdivision, special improvement district or any other taxing or assessing authority. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit shall divest or in any way affect title to any other Unit. In the event that such taxes or assessments for any year are not separately assessed to each Unit but rather are assessed on the Project as a whole, then each Owner shall pay such Owner's proportionate share thereof in accordance with such Owner's Common Interest and, in said event, such taxes or assessments shall be a Common Expense. If necessary, a special Assessment or Assessments may be levied against the Units in an amount equal to said taxes, to be paid thirty (30) days prior to the due date thereof.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

5.01. Duties and Powers. In addition to the duties and powers enumerated in the Bylaws and the Articles, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Maintain, repair, replace, restore, operate and manage all of the Common Elements and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association. This obligation shall not extend to any portion or facility of the Common Elements required to be maintained by an individual Owner under this Declaration or the Bylaws.

(b) Enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditures of funds of the Association, the employment of legal counsel and the commencement and prosecution of legal actions.

(c) Maintain such policy or policies of insurance as are required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of, and protecting the interest of, the Association and its Members.

(d) Grant and reserve easements where necessary or desirable for utilities and utility facilities over the Common Elements and Units to serve the Common Elements and the Units and amend the Map to show same.

(e) Have the authority to employ a Managing Agent and to contact with the Managing Agent and/or any independent contractors to perform all or any part of the duties and responsibilities of the Association, subject to the Bylaws and restrictons imposed by any governmental or quasi-governmental body or agency having jurisdicton over or interest in the Project. The members of the Board shall not be liable for any omission or improper exercise by the Managing Agent of any power or function delegated by the Board.

(f) Keep or cause to be kept records with detailed accounts of the income, receipts and expenditures affecting the Project and its administration, specifying the maintenance and repair expenses with regard to the Common Elements and any other expenses incurred by or on behalf of the Project or Association. The records so kept shall be available for inspection by all Owners and Mortgagees of Units during regular business hours. All records shall be kept in accordance with generally accepted accounting principles and shall be audited at least once a year by an independent auditor. Copies of the auditor's reports shall be made available to all Owners and Mortgagees upon written request and payment of reasonable reproduction costs.

(g) Adopt reasonable rules not inconsistent with this Declaration, the Articles, or the Bylaws relating to the use of the Common Elements and all facilities thereon, and the conduct of Owners and their tenants, invitees and guests with respect to the Project and other Owners.

5.02. Maintenance of Project by Association. The Association shall provide for maintenance of the Project as provided in the Bylaws. The responsibility of the Association for maintenance and repair shall not extend to the cost and expense of repairs or replacements arising out of or caused by the willfull or negligent act or neglect of any Owner, or such Owner's guests, tenants or invitees. The cost and expense of repair or replacement of a Unit exterior or of any portion of the Common Elements resulting from such excluded items shall be the responsibility of such Owner who (or whose guests, tenants or invitees) neglects or willfully damages such excluded items. The Association may cause such repairs and replacements to be made at such Owner's sole cost and expense, and if said Owner shall fail to pay for such repairs or replacements upon demand, the cost thereof (plus interest from the date of payment(s) at the maximum legal rate, or if there is not such maximum rate, then at the rate of two percent per month) shall be added to the Assessments chargeable to such Unit and shall be deemed to be a special Assessment hereunder. Any such amounts added to the Assessments chargeable against a Unit shall be secured by the liens reserved hereinabove for Assessments, and may be collected by any means provided herein for the collection of Assessments, including but not limited to foreclosure upon the Unit.

5.03. Association Easements and Access to Units. For the purpose of performing the maintenance, repair or replacement

authorized by this Article or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have a non-exclusive easement over and onto all portions of the Common Elements, and shall also have the right, after reasonable notice to the Owner, and at reasonable hours, to enter any Unit for such purposes and to enter any Unit without notice at any time in the event of an emergency. Should any Owner change any lock on any entrance to such Owner's Unit, such Owner shall immediately provide to the Board a key to the new lock. Damage to the interior or any part of a Unit or Units 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 shall be a Common Expense of all of the Owners; provided, however, that if such damage is the result of the neglect, misuse or negligence of an Owner, then such Owner shall be responsible and liable for all such damage. All damaged improvements shall be restored to substantially the same condition of such improvements prior to damage. All costs incurred in maintenance, repairs and replacements as to the General Common Elements, whether located under or outside of Units (unless required to be maintained by an individual Owner under this Declaration or necessitated by the neglect, negligence or misuse by an Owner or his guests, tenants or invitees, in which case such expense shall be charged to such Owner) shall be the Common Expenses of all the Owners.

ARTICLE VI

UTILITIES

6.01. Owners' Rights and Duties. The rights and duties of the Owners of Units within the Project with respect to utilities shall be as follows:

(a) Each Owner shall pay for utilites which are separately metered and billed to such Owner's Unit by the respective utility companies or submetered and billed to each Unit by the Association. Any such utility expenses billed to each Unit by the Association shall be deemed to be special Assessments hereunder, shall be secured by the liens reserved hereinabove for Assessments and may be collected by any means provided herein for the collection of Assessments including but not limited to foreclosure upon the Unit. Utility expenses which are not metered or submetered and separately billed to the Units shall be part of the Common Expenses, and each Owner shall pay such Owner's pro-rata share thereof as in the case of other Common Expenses.

(b) Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air-conditioning conduits, ducts, or flues (such items being hereinafter collectively called the "Connections") are located or installed within the Project, which connections, or any portion thereof, lie in or upon more than one Unit, Declarant reserves for the use and benefit of the Association the right and an easement to the full extent reasonably necessary therefor, to enter upon the Units or to have the utility companies enter upon the Units in or upon which said Connections, or any portion thereof lie, to repair, replace and generally maintain said Connections

as and when reasonably necessary; provided, however, the exercise of such easement rights shall be in a manner reasonably calculated to cause minimal interference with the continued use and occupancy of the Units so affected by the Owners thereof, while still adequately serving the purposes for which they are granted.

(c) Whenever Connections are located or installed within the Project, which Connections serve more than one Unit, the Owner of each Unit served by said Connections shall be entitled to the full use and enjoyment of such portions of said Connections as service such Owner's Unit.

6.02. Easement for Utilities and Maintenance. Easements over and under the Property for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, and telephone lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as are shown on the Map, and as may be hereafter required to serve the Property, are hereby reserved by Declarant for the use and benefit of the Association, together with the right to grant and transfer the same.

6.03. Association's Duties. The Association shall maintain all utility installations located in the Common Elements except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Project except those metered or submetered and charged separately to the Units.

ARTICLE VII

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project and each Unit therein is subject to the following:

7.01. Use of Individual Units. No Unit shall be occupied and used except (i) as office space for accountants, architects, attorneys, engineers, physicians, real estate brokers and developers and other like and similar professionals; (ii) as space for art galleries, interior decorators, fine jewelers and other like and similar artisans; (iii) as office space for banking and general businesses; and (iv) for other similar purposes. Notwithstanding anything herein to the contrary, however, no unit shall be used except in a dignified, tasteful, appropriate, proper, restrained and professional manner. The Board of Directors of the association shall have the absolute and final determination of whether or not a particular use of an individual unit is in compliance with the use restrictions above provided, and in the event of any attempted non-complying use, the Board of Directors of the Association shall have the right and power to promulgate a written decision after hearing to prohibit any non-conforming use of a unit. Each unit owner agrees to comply with the use provisions herein contained and any and all written decisions made by the Board of Directors of the Association concerning such use. Further, each Unit owner agrees that in the event any owner contests any written decision of said Board of Directors in any court of this State, then the substantial evidence rule as the same is known in the Texas administrative appeal law shall be applicable to such decision and, all such written decisions of such Board of Directors shall

be enforceable by injunctive or other remedies, both at law and in equity, by any court of appropriate jurisdiction in Kerr County, Texas.

7.02. Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Unit or in any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with, the use of the project as an office building or the quiet enjoyment of each Owner's respective Unit or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or cause a refusal to renew the same, or which may impair the structural integrity of the Building. If, by reason of the occupancy or use of a Unit by any Owner, the rate of insurance on all or any portion of the Project shall be increased, such Owner shall be personally liable to the Association for such increased costs and if said Owner fails to pay said increased costs upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum legal rate, or if there is no such maximum legal rate, then at the rate of two percent per month) shall be added to the Assessment chargeable to the Owner's Unit and shall be deemed to be a special assessment hereunder. Any such amounts added to the Assessments chargeable against a Unit shall be secured by the liens reserved hereinabove for Assessments and may be collected by any means provided herein for the collection of Assessments, including but not limited to foreclosure upon the Unit.

7.03. Vehicle Restrictions. The use, parking and storage of all vehicles, including but not limited to all automobiles, trucks, commercial vehicles or similar equipment shall be subject to regulation by the Board which may regulate, prohibit or limit the use thereof within the Project. No noisy or smokey vehicles shall be operated on the Project, and no off-road unlicensed motor vehicles shall be maintained or operated upon the Project, except as may be reasonably necessary to the execution of the rights or duties of the Association under this Declaration.

7.04. Signs. Declarant may place signs in or around the Common Elements and use the Common Elements for sales purposes until the last Unit in the entire Project is conveyed. Owners other than the Bank of Kerrville are prohibited from placing signs in or around the Common Elements or displaying signs to the public view from any Unit or any portion of the Project; provided, however, that each Owner shall have the right to place a sign with such Owner's name on any door leading into the Owner's Unit, the size, color and style of said sign to be subject to approval by the Board. The Bank of Kerrville shall have the right to place signs on the outside of the bank tower building.

7.05. Directories. A Building directory will be placed by the Association in a conspicuous place in the Building. No other directories shall be permitted unless previously consented to by the Board in writing.

7.06. Obstruction of Passageways. The sidewalks, entrances, stairways, corridors, elevators and passageways of the Project shall not be obstructed or encumbered by any Owner or used by any Owner for any purposes other than ingress and egress.

7.07. Projections from Building. No antennae, awnings or other fixtures or appurtenances shall be attached to the outside

walls or the windowsills of the Building, or otherwise affixed so as to project from the Building without the prior written consent of the Board.

7.08. Plumbing Fixtures and Appliances. Plumbing fixtures and appliances shall be used only for purposes for which the same were constructed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. Damage resulting to any Common Elements from misuse by an Owner shall be paid by such Owner as provided in Section 5.02 hereinabove.

7.09. Placing of Equipment. Business machines and other equipment shall be placed and maintained by all Owners at such Owners' expense in settings sufficient to absorb and prevent unreasonable vibration, noise and annoyance.

7.10. Animals. No animals or birds of any kind shall be raised, bred, or kept in any Unit, or on any portion of the Project except as permitted in the Bylaws or in the rules and regulations adopted by the Board and published from time to time.

7.11. Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Project and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers in accordance with the Bylaws and the rules and regulations adopted by the Board and published from time to time. All equipment, garbage cans, or storage piles shall be kept screened and concealed from view of other Units, streets, and the Common Elements.

7.12. Mining. No drilling, digging, quarrying or mining operation of any sort shall be permitted on the Property.

7.13. Right to Lease. The Owners of the respective Units shall have the right to lease the Units provided that all leases must be in writing and made subject to the covenants, conditions, easements, restrictions, limitations, liens for Common Expenses and uses contained in this Declaration and the Bylaws, and any rules and regulations adopted by the Board and published from time to time. The right of Declarant to rent or lease units until their initial transfer to any third part or parties is hereby specifically reserved.

7.14. Mortgaging a Unit - Priority. Except as hereinafter limited, any Owner shall have the right from time to time to mortgage or encumber such Owner's interest by deed of trust, mortgage or other security instrument. An Owner may create and grant a mortgage or deed of trust lien against his Unit which is subordinate and inferior to one or more other mortgages or deeds of trust (all such inferior liens hereinafter collectively called "Inferior Mortgage") on the following conditions: (1) that any such Inferior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, easements, obligations and liens for Common Expenses and other payments created by this Declaration and by the Bylaws; and (2) that the mortgagee under any Inferior Mortgage shall release by written recordable instrument, for the purpose of restoration of any improvements upon the mortgaged premises, all of its 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 Project by the Association. Such release shall be furnished to the Association by the mortgagee under any Inferior Mortgage promptly following written request therefor by the Association. The provisions of this paragraph 7.14 relating to an Inferior Mortgage shall not apply to any first Mortgage.

7.15. Owner's Responsibility for Maintenance Of Unit. Each Owner shall maintain and keep in a good state of repair the interior of such Owner's Unit, and all fixtures and equipment, including but not limited to the heating and air conditioning systems servicing such Owner's Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Unit, shall be maintained and kept in good repair by the Owner thereof. Without limiting the generality of the foregoing, each Owner, at such Owner's expense, shall maintain and keep in good repair and replace, if necessary, any air conditioning compressor, hot water heater unit, fans, ductwork and heating unit and cooling coils utilized solely in or for such Owner's Unit, and each Owner, shall be obligated to promptly repair and replace, at such Owner's expense, all windows, doors or glass therein which become broken or cracked. All fixtures and equipment not utilized solely in or for a particular Unit shall be maintained and repaired at the expense of the Association. An Owner when exercising the right and responsibility of repair, maintenance, replacement or remodeling, as herein defined, shall never alter in any manner whatsoever the exterior appearance of such Owner's Unit, except by written consent of the Board. Each Owner shall, however, have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding such Owner's Unit. In the event an Owner fails to maintain such Owner's Unit as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board may notify such Owner of the work required and request that it be done within thirty (30) days from the giving of such notice. In the event such Owner fails to complete such maintenance within said period, the Board may cause such work to be done and the Owner shall be personally liable to the Association for the cost of such work. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum legal rate, or if there is no such maximum legal rate, then at the rate of two percent per month) shall be added to the Assessment chargeable to the Owner's Unit and shall be deemed to be a special Assessment hereunder. Any such amounts added to the Assessments chargeable against a Unit shall be secured by the liens reserved hereinabove for Assessments and may be collected by any means provided herein for the collection of Assessments, including but not limited to foreclosure upon the Unit.

7.16. Liability of Owners for Damage to Common Elements. An Owner shall do no act or work in or to any Unit or Common Element that will impair the structural soundness or integrity of the Building or any other improvement to the Property, impair any easement or hereditament or otherwise adversely affect the Building or Common Elements. No Owner shall in any way alter, modify, add to, or otherwise perform any work whatsoever upon any of the Common Elements. The Owner of each Unit shall be liable to the Association for all damages to the Common Elements or improvements thereon caused by the neglect, misuse or negligence of such Owner or any tenant or other occupant of such Owner's Unit or any guest or invitee.

7.17. Compliance with Provisions of Declaration and Bylaws. Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws and the decisions and resolutions of the Association or the Board adopted pursuant thereto as the same may be amended from time to time. Failure to comply with any of the Bylaws, rules or resolutions of the Association shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Managing Agent or Board on behalf of the Association or by an aggrieved Owner.

7.18. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article VII or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Unit in the Project in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit, agrees to hold Declarant harmless therefrom.

ARTICLE VIII

GENERAL PROVISIONS

8.01. Enforcement. The Association, any Owner, or the Managing Agent shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court; provided, however, that an individual Owner shall have no right to enforce the collection of any Assessment levied against any other Owner under Article IV above; and provided further, that failure to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. All rules, regulations, duties and obligations relating to Owners, Units or the Project expressed herein or in the Bylaws are covenants, conditions and restrictions and are a "charge on the ownership interest" of each Owner. Any injunctive remedies or other remedies specified herein or in the Bylaws for breach of these covenants, conditions and restrictions, are also available against any tenant or other occupant (or former tenant or other occupant) of a Unit, as well as against the Owner (or former Owner) thereof. All covenants, conditions and restrictions, including the duties to pay Assessments, shall be deemed "restrictive covenants" within the meaning of any Texas statute or other law governing rights of owners' associations to enforce such restrictive covenants, including, but not limited to, any statutory right of reimbursement of attorneys' or other fees incurred in connection with enforcement of restrictive covenants.

8.02. Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any laws or ordinances of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

8.03. Encroachment and Protrusion Easements. Each Unit within the Project is hereby declared to have an easement over all adjoining Units and the Common Elements for the purpose of accommodating any encroachment and/or protrusion due to engineering errors, errors in original construction, settlement or shifting of the Building, or any other cause. There shall be valid easements for the maintenance of said encroachments and/or protrusions as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, protrusion, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment or protrusion be created in favor of an Owner or Owners if said encroachment of protrusion occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially

or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments and/or protrusions over adjoining Units or Common Elements shall be permitted and that there shall be a valid easement for the maintenance of said encroachments and/or protrusions so long as they shall exist. Such encroachments or protrusions shall not be considered to be encumbrances either on the Common Elements or on a Unit for purposes of marketability of title or otherwise.

8.04. Termination of Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner or such Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against either the Common Elements or the Unit of any other Owner not expressly consenting to or requesting the same, except that express consent shall be deemed to be given by the Owner of any Unit to the Board or Managing Agent in the case of emergency repairs. Each Owner shall indemnify and hold harmless each of the other Owners from and against any and all liability arising from any such claims or liens against the Units of any other Owners or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the indemnifying Owner's Unit at such indemnifying Owner's request. Labor performed or materials furnished for the General Common Elements, if duly authorized by the Managing Agent or the Board in accordance with this Declaration or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against each Unit in the Project.

8.05. Mortgage Protection Clauses.

(a) Rights of Mortgagees. No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any Mortgage on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, unless otherwise provided herein.

(b) Notice to Lenders. All Mortgagees that have filed with the Association an appropriate written request shall be entitled to receive the following notices in writing from the Association:

(i) Notice of any proposed change in the Project Documents, which notice shall be given thirty (30) days prior to the effective date of such change;

(ii) Notice of default by the Owner or grantor of any Mortgage on a Unit (the beneficial interest in which is held by said Mortgagee) in the performance of such Owner's or grantor's obligations under the Project Documents, which default is not cured within thirty (30) days.

(iii) Notice of any damage or destruction to any Unit subject to a Mortgage (the beneficial interest in which is held by said Mortgagee), which damage exceeds One Thousand Dollars ($1,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such damage or destruction; and

(iv) Notice of any loss to or taking of any portion of the Common Elements or facilities or improvements thereon, which loss or taking exceeds Ten Thousand Dollars ($10,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such loss or taking.

(c) Changes Requiring Lender Approval. Without the prior written approval of the Declarant, all of the Mortgagees and sixty-six and two-thirds percent (66-2/3%) of the undivided interest in the Common Elements held by the Owners other than Declarant (except to the extent a higher percentage of approval may be expressly required elsewhere herein or by applicable law), the Association shall not be entitled to:

(i) By act or omission, seek to abandon or terminate the Condominium Project, except for abandonment or termination of the Project provided by law, in case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) Change the pro rata interest or obligations of any Unit for the purpose of (a) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each Unit in the Common Elements; provided, however, that nothing herein shall prevent Declarant from redetermining and reallocating between Units owned by Declarant the pro rata share of ownership in the Common Elements of such Units owned by Declarant which Declarant combines, partitions or subdivides prior to sale of such Units to a third party;

(iii) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause; or

(iv) Use hazard insurance proceeds for losses to any property on the Project (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction thereof, except as otherwise provided herein or by applicable statute in case of substantial loss or damage to the Units and/or the Common Elements.

(d) Mortgage Priority. Notwithstanding any language contained in this Declaration or the other Project Documents to the contrary, no Owner or other party shall have priority over any rights of the Mortgagee of any Unit pursuant to its Mortgage in the case of a distribution to the Owner of such Unit of insurance proceeds or condemnation awards for losses to or taking of all or a portion of such Unit and/or Common Elements. Mortgagees shall have the right to examine the books and records of the Association at all reasonable times during regular business hours of the Association.

(e) Taxes, Assessments, and Charges Which May Become Liens. All taxes, assessments, and charges which may become liens prior to any Mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

8.06. Revocation or Amendment to Declaration. This Declaration shall not be revoked unless all of the Owners and all of the holders of any recorded first lien Mortgage covering or affecting any or all of the Units unanimously consent and agree to such revocation by instrument(s) duly recorded. Except as otherwise specifically provided herein, this Declaration shall not be amended unless the Owners representing an aggregate ownership interest of at least eighty percent (80%), of the Common Elements and all of the holders of any recorded first lien Mortgage covering or affecting any or all Units consent and agree to such amendment by instrument(s) duly recorded; provided, however, that the percentage of the undivided interest in the Common Elements appurtenant to each Unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the Unit Owners and all Mortgagees expressed in an amended Declaration duly recorded [subject only to the rights granted herein to change such percentage of undivided interest as set forth in Sections 2.06, 2.07 and 8.05(c)(ii)]. Notwithstanding the foregoing, before the first annual meeting of the Association, Declarant may, with the written consent of any Mortgagee of any Unit which would be affected (but without the consent of any Owner) amend this Declaration, the Map, and the Bylaws.

8.07. Insurance; Damage or Destruction.

(a) Association Liability Insurance. The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant and the agents and employees of each and the Owners and the respective guests and invitees of the Owners against any liability incident to the ownership or use of the Common Elements and public ways, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured, and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. The scope of the coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location, and use. Coverage shall be in an amount not less than one million dollars ($1,000,000.00) for personal injury or death and one hundred thousand dollars ($100,000.00) for property damage arising out of a single occurence.

(b) Master Hazard Insurance. Additionally, the Association shall obtain and continue in effect a master or blanket policy of multi-peril insurance on the Project, providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than eighty percent (80%) of the insurable value (based upon replacement cost) of all improvements on the Property. The master policy of multi-peril insurance shall contain extended coverage

and replacement costs endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, a stipulated amount clause and a determinable cash adjustment clause, or a similar clause to permit cash settlement in the event of destruction and a decision not to rebuild pursuant to this Declaration. Such policies shall be in form and amount as may be determined by the Board, shall name as insured the Association, the Owners and Declarant (so long as Declarant is an Owner of any Units), and all Mortgagees as their respective interests may appear, and shall provide that any proceeds be paid to the Association for the use and benefit of the Owners and Mortgagees as their interests may appear. Such policy shall not be required to insure the personal property or customized items within any individual Units, which shall be and remain the responsibility and risk of the Owners.

(c) Additional Association Insurance. Association may purchase such other insurance as it may deem necessary, including without limitation plate-glass insurance, worker's compensation, directors' liability, and errors and omissions insurance, and the Association shall purchase fidelity coverage against dishonest acts by any directors, managers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity bond insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half (1-1/2) times the Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Insurance Premiums. Insurance premiums shall be a Common Expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Owner to obtain additional individual insurance.

(e) Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project, in whole or in part, upon its destruction or obsolescence. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead for the purpose of dealing with said Project upon its destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by and through its President or any Vice President and Secretary or any Assistant 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 interest of an Owner which is necessary and appropriate to exercise the powers herein granted.

Any repair, reconstruction or replacement made of the improvement(s) shall be to substantially the same condition existing prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purposes of repair, restoration or replacement unless the Owners agree not to rebuild in accordance with the provisions hereinafter set forth. The Association shall have full authority, right and power, as attorney-in-fact, to cause any repair and restoration of the improvement(s) permitted or required hereunder. Without limitation on the generality of the foregoing, the Association as said attorney-in-fact shall have the full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to settle and compromise any and all claims under said insurance policies, to collect proceeds and to distribute the same to the Association, the Owners and their respective Mortgagees (subject to the provisions hereof) as their interests may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Owners, the Association and the Project as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents of the interior of any Unit or for the liability of any Owner for the occurrences therein not caused by or in connection with the Association's operation, maintenance or use of the Project.

(f) Reconstruction or Repair of Project. In the event of fire, casualty or other disaster involving substantial damage to the Project, within ten (10) days of receipt of determination of the amount of insurance proceeds available to the Association, the Association shall cause notice to be given of a special meeting of Members to be held not less than twenty (20) nor more than thirty (30) days from the giving of such notice for the purpose of considering the adoption of a Plan for Reconstruction of the Project. Such notice shall specify the amount of insurance proceeds available, the estimated cost of restoration and other data deemed pertinent to the determination called for by this Section.

(g) Sufficient Proceeds. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the Project, shall, subject to the provisions of Sections 8.07(i) and 8.07(j) below, be applied to such reconstruction. Reconstruction of the Project, as used in this Section 8.07(g) means restoring the Project to substantially the same condition in which it existed immediately prior to the fire, casualty or other disaster, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Such reconstruction shall be caused to be accomplished by the Association or its duly authorized agents.

(h) Insufficient Proceeds. If the insurance proceeds are insufficient to reconstruct the Project, damage or destruction thereof shall, subject to the provisions of Sections 8.07(i) and 8.07(j), be promptly caused to be repaired and restored by the Association or its duly authorized agents, using proceeds of insurance, if any, on the Project for that purpose, and the Owners shall be liable for the special Assessment or Assessments for any deficiency as hereinafter provided.

(i) Less Than Two-Thirds Destruction. If less than two-thirds (2/3) of the Project (as determined by the vote or written consent of Owners owning at least fifty-one percent (51%) of the Common Elements in the exercise of their sole discretion) is destroyed or substantially damaged by fire or any other disaster, then the Project shall be rebuilt or repaired under a Plan for Reconstruction adopted by majority vote of the Owners unless the Members of the Association by unanimous vote or written consent, and all of the Mortgagees by prior written consent shall elect not to repair such damage; in which event the procedures set forth in Section 8.07(j) below shall be followed.

(j) Two-Thirds or More Destruction. If two-thirds (2/3) or more of the Project (as determined by the vote or written consent of Owners owning at least fifty-one percent (51%) of the Common Elements in the exercise of their sole discretion), is destroyed or substantially damaged by fire or any other disaster, and if the Owners, by unanimous vote or written consent, do not voluntarily, within one hundred eighty (180) days after determination of the amount of the Association's insurance proceeds resulting from such destruction or damage, adopt a Plan for Reconstruction (unless within such period the buy-out contemplated in this Section 8.07(j) is effected), the condominium regime shall be deemed to have been waived, and the Association shall take all action required under the Act to regroup and merge the filial estate with the principal property, whereupon:

(i) the Project shall be deemed to be owned in common by the Owners;

(ii) the undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Elements;

(iii) any liens on each Unit and that certain portion of the Common Elements appurtenant thereto shall be deemed to be transferred in accordance with their existing priorities to the undivided interest of the Owner of the affected Unit; and

(iv) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided among all the Owners and their mortgagees as their interests shall appear in a percentage equal to the Common Interest previously owned by each Owner.

Notwithstanding the foregoing provisions hereof, in the event of destruction or substantial damage to two-thirds (2/3) or more of the Project, all of the Mortgagees by written approval and the Owners, by an affirmative vote of the Owners owning at least three-fourths (3/4) of the undivided Common Elements, may elect, at a meeting of the Members duly called for such purpose, to sell or otherwise dispose of the Project. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Alternatively, the Association may, by affirmative vote of the Members owning at least three-fourths (3/4) of the undivided Common Interest at a meeting of the Members duly called for such purpose, elect to purchase all the ownership interests in the Project of those Owners not voting to rebuild. Such action will be binding upon the Association and all Owners, and it shall thereupon become the duty of the Association and every Owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect the sale and purchase. The purchase price for each ownership interest being purchased shall be payable to the Owner and the Owner's Mortgagees as their interests shall appear and shall be an amount equal to the Owner's percentage interest in the Association's insurance proceeds plus an amount equal to the Owner's percentage interest in an amount equal to the then market value of the Project, considered as a whole, excluding such insurance proceeds and less the amount of any liens against the Project or any part thereof. In the event the parties are unable to agree upon the purchase price, the price shall be determined by appraisal as follows: The Association shall select one MAI designated appraiser to act for it; within thirty (30) days of the Association's appointment of an appraiser the selling Owners shall appoint an MAI designated appraiser to act for them; forthwith the two appraisers acting together shall select a third independent MAI designated appraiser by mutual agreement; and the three appraisers by a vote of the majority of the group shall determine the purchase and sale price with respect to each Owner selling hereunder. All such purchases and sales shall be closed within sixty (60) days subsequent to the determination of the purchase and sale price as aforesaid, with the Association financing the same in accordance with Section 8.10. Within fifteen (15) days of the last such closing, the Association shall cause to be held a special meeting of Members for the purpose of securing approval of reconstruction.

(k) Repair of Interior of Unit. Each Owner shall be responsible for the reconstruction, repair or replacement of that portion of the interior of such Owner's Unit which the Owner has installed, furnished or provided, including but not limited to, any floor coverings, wall coverings, window shades, draperies, furniture, furnishings, decorative light fixtures, or other improvements, betterments and additions to the Unit, all equipment and appliances located therein irrespective of whether or not such appliances are "built-in" to the Unit. Each Owner shall also be responsible for the costs not otherwise covered by

insurance carried by the Association of any reconstruction, repair or replacement of any portion of the Project necessitated by such Owner's negligence or misuse or the negligence or misuse of his invitees, guests, agents, servants, employees or contractors. In the event damage to all or any part of the interior of an Owner's Unit is covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of such damage upon receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof. In the event damage to all or any part of the interior of an Owner's Unit is not covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of said Owner's Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof. All draperies, venetian blinds, vertical blinds and outside window coverings shall conform to the decor and standards prescribed by the Board of Directors of the Association.

(l) Application of Insurance Proceeds. As soon as possible after the occurrence of a casualty which causes damage to any part of the Project for which the Association has insurance coverage (hereinafter referred to as the "Casualty"), the Association shall obtain reliable and detailed cost estimates of the following:

(i) The cost of restoring all damage caused by the Casualty to the Common Elements (hereinafter referred to as the "Common Element Costs"); and

(ii) The cost of restoring that part of the damage caused by the Casualty to each Unit which is or would be covered by insurance held by the Association without regard to the policy limits of such insurance (hereinafter referred to as the "Unit Costs"). All insurance proceeds available to the Association with respect to the Casualty shall first be applied to the payment of the actual Common Element Costs and the balance thereof, if any, shall thereafter be applied to the payment of the actual Unit Costs. However, if such insurance proceeds are not sufficient to cover such estimated costs, then a special Assessment or Assessments shall be made against the Owners by the Association as provided in Section 8.07(m). If such insurance proceeds are in excess of the amount needed to cover such estimated costs, the surplus shall be retained by the Association to be used to defray Common Expenses.

(m) Plan for Reconstruction. If the Owners adopt a Plan for Reconstruction, all of the Owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be deemed to be a special Assessment under this Declaration and shall be made pro-rata according to each Owner's interest in the Common Elements and shall be due and payable at the time and in the manner

specified by the Association. The Association shall have the authority 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 special Assessment. The special Assessment provided for herein shall be a debt of each Owner and a lien on each Condominium Unit and may be enforced and collected as provided for Assessment liens herein. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to foreclose the lien against the Condominium Unit of any Owner refusing or failing to pay such special Assessment within the time provided.

(n) Personal Liability Insurance. In addition to the master policies which the Association shall carry, the Board shall have the power to require each Owner, at such Owner's sole cost and expense, to carry personal liability insurance covering damage to property or injury to the person of others within the Project resulting from negligence of the Owner or such Owner's agents, tenants, guests or invitees, in such amount as may be deemed necessary by the Board.

(o) Waiver of Subrogation. Notice of Cancellation. All property and liability insurance carried by the Associaton or the Owners shall contain provisions whereby the insurer waives rights of subrogation as to the Association, offices, and directors, and any Members, their guests, agents and employees. All policies of hazard insurance must contain or have attached the standard mortgage clause commonly accepted by private institutional mortgage investors in the area in which the Units are located.

8.08. Obsolescence.

(a) Renewal and Reconstruction of Obsolete Project. The Owners representing in the aggregate, a seventy-five percent (75%) or more, ownership interest in the Common Elements may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project, which plan must have the unanimous approval of all Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such plan shall be given to all Owners. Such plan shall be recorded in the Kerr County real estate records. The expenses of any renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Condominium Units. These assessments shall be deemed to be special Assessments hereunder, shall be levied in advance and shall be allocated, collected and enforced as herein provided for Assessment liens, including foreclosure upon the Unit. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction. In the event amounts collected pursuant to this Section 8.08. are in excess of the amount needed to complete the renewal and reconstruction of the Project, such excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each Owner.