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CONDOMINIUM DECLARATION
for
199 EAST PEARL
CONDOMINIUM
ADDITION TO THE
TOWN OF JACKSON

Upon recording, please return to:

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Jackson, WY 83001

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CONDOMINIUM DECLARATION

FOR

199 EAST PEARL CONDOMINIUMS

This Condominium Declaration ("Declaration") for 199 East Pearl Condominium Addition to the Town of Jackson is made this 10th day of February 2004, by PEARL WILLOW INVESTORS LLC, a Wyoming limited liability company (the "Declarant"), pursuant to the Condominium Ownership Act, Wyoming statute § 34-20-101 et. seq. (the "Act").

ARTICLE I. PREAMBLE, RECITALS AND CERTAIN DEFINITIONS

PEARL WILLOW INVESTORS LLC, as the developer of the 199 East Pearl Condominiums has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of 199 East Pearl Condominiums as a condominium community in the Town of Jackson, Wyoming.

ARTICLE II. CREATION OF THE COMMUNITY

Section 2.1 The Declarant; the Real Property. The Declarant, together with its successors and assigns, including any person or entity acquiring all, but not less than all, of the interest of the Declarant in the Real Property, whether by purchase, or pursuant to foreclosure proceedings or otherwise, is the owner of that certain real property located in the Town of Jackson, County of Teton, and State of Wyoming, legally described as 199 East Pearl Condominium Addition to the Town of Jackson according to that plat recorded in the Office of the Teton County Clerk on February 17, 2004 as Plat No. 1107, together with all buildings and improvements constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property (the "Real Property").

Section 2.2 Intention of Declarant. Declarant intends to create a project and provide for condominium ownership of the Real Property under the Act.

Section 2.3 The Project. The term "Project" shall collectively mean the Real Property and the Building and other improvements located on the Real Property.

Section 2.4 Type of Ownership. This condominium project will provide a means for ownership in fee simple of separate interests in Units together with an undivided fee simple interest in the General Common Elements and Limited Common Elements, as those terms are herein defined.

ARTICLE III. ADDITIONAL DEFINITIONS

The following terms shall have the following meaning when used herein, unless the context otherwise requires:

Section 3.1 Association. "Association" means 199 East Pearl Condominium Owners Association, a nonprofit mutual benefit corporation organized under Wyoming statute § 17-19-101 et. seq. All references herein to the "Board" shall mean the Board of Directors for the Association.

Section 3.2 Association Bylaws. "Association Bylaws" means the Bylaws of 199 East Pearl Condominium Owners Association as the same may be amended from time to time.

Section 3.3 Building. "Building" means the structure constructed or located on the Real Property pursuant to this Declaration.

Section 3.4 Commercial Unit. "Commercial Unit" means each of the individually-owned Condominium Units designated on the Condominium Plat as Units 101, 102, 103 and 104, each of which will be occupied and used by Unit Owners and Occupants for office and retail purposes only or such other uses permitted by applicable zoning ordinances and not otherwise prohibited by this Declaration.

Section 3.5 Common Elements. "Common Elements" shall mean the General Common Elements, Limited Common Elements, Limited Common Elements – Residential, Limited Common Elements – Commercial, and Limited Common Elements – Parking in the aggregate, or a portion thereof, as the context requires. Common Elements may also be referred to herein as "Common Element".

Section 3.6 Condominium. "Condominium" means the condominium created by this Declaration.

Section 3.7 Condominium Documents. "Condominium Documents" means the Association Bylaws and this Declaration.

Section 3.8 Condominium Plat. "Condominium Plat" means that Condominium Plat of 199 East Pearl Condominium Addition to the Town of Jackson recorded with the Teton County Clerk contemporaneously with this Declaration, consisting of a plat of the Real Property, showing a survey and legal description thereof, the location of the Building with respect to the boundaries of the Real Property, together with diagrammatic floor plans of the Building showing the boundaries of each Unit within the Building, including horizontal and vertical locations and dimensions of all boundaries of each Unit, Unit numbers identifying the Units and the General and Limited Common Elements, together with such other information as may be included therein in the discretion of the Declarant.

Section 3.9 Deed Restricted Unit. "Deed Restricted Unit" means Units 205 and 206 that have been made available for residential purposes only to "Qualified Buyers" as determined

by the Teton County Housing Authority (hereinafter "TCHA") as a condition of the approval of the 199 East Pearl Final Development Plan to further the Town of Jackson and Teton County's goal to provide realistically affordable housing by full-time working middle-income residents of Teton County. The Deed Restricted Unit Owners shall receive special consideration as necessary to maintain the affordability of the Deed Restricted Unit as determined by Teton County and TCHA.

Section 3.10 General Common Elements. "General Common Elements" means the entire Project excepting all Commercial and Residential Units. Without limiting the generality of the foregoing, the General Common Elements shall include (i) the driveway and parking areas, the land, courtyards, lobbies and corridors; (ii) all appurtenances; (iii) all pipes, ducts, flues, chutes, conduits, wires and other utility installations to (but not at) the outlets; and (iv) such component parts of walls, floors, ceilings, columns, roofs and other structures and installations that are outside of the Unit boundaries as delineated or described on the Condominium Plat. Each owner shall own an undivided interest in the General Common Elements as a tenant in common with all the other owners of the Property in the proportions provided in Exhibit "A" hereto, and, except as otherwise limited in this Declaration, shall have the right to use the General Common Elements for all purposes incident to the use and occupancy of his Unit, which right shall be appurtenant to the Unit. General Common Elements may be referred to herein and on the Condominium Plat as "General Common Element" or "GCE".

Section 3.11 Limited Common Elements. "Limited Common Elements" means those portions of the General Common Elements as described by Wyoming Statute Section 34-20-103 for the exclusive use of one or more but fewer than all of the Units, and any Limited Common Elements specifically allocated to Units as shown on the Condominium Plat. Limited Common Elements may be referred to herein or on the Condominium Plat as "Limited Common Element" or "LCE".

Section 3.12 Limited Common Elements – Commercial. "Limited Common Elements – Commercial" means those Limited Common Elements for the use of Units 101, 102, 103 and 104 as designated by the Association, as may be described herein and as shown on the Condominium Plat. Limited Common Elements – Commercial may also be referred to herein and on the Condominium Plat as "Limited Common Element – Commercial", "LCE – Commercial", "LCE – C" or "Commercial Limited Common Elements".

Section 3.13 Limited Common Elements – Parking. "Limited Common Elements – Parking" means those Limited Common Elements for the exclusive use of one or more Condominium Unit(s) as parking as designated by the Declarant herein or in one or more separately recorded instruments. Limited Common Elements – Parking may also be referred to herein and on the Condominium Plat as "Limited Common Element – Parking", "LCE – Parking", "LCE – P" or "Parking Limited Common Elements".

Section 3.14 Limited Common Elements – Residential. "Limited Common Elements – Residential" means those Limited Common Elements for the use of Units 100, 201-206 and 301-302 as designated by the Association, as may be described herein and as shown on the

Condominium Plat. Limited Common Elements – Residential may also be referred to herein and on the Condominium Plat as “Limited Common Element – Residential”, “LCE – Residential”, “LCE – R” or “Residential Limited Common Elements”.

Section 3.15 Mortgage. “Mortgage” means any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.

Section 3.16 Mortgagee. “Mortgagee” means any person, or any successor to the interest of such person, named as the mortgagee, trust beneficiary, or creditor under any Mortgage under which the interest of any Owner, or successor to the interest of such Owner, is encumbered.

Section 3.17 Occupant. “Occupant” means any person or persons in possession of a Unit, including Unit Owners, lessees, guests, agents, employees and invitees of such person or persons.

Section 3.18 Owner. “Owner” means any person or entity, including Declarant, at any time owning a Unit. The term “Owner” shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 3.19 Residential Unit. “Residential Unit” means each of the individually-owned Condominium Units designated on the Condominium Plat as Units 100, 201-206 and 301-302, each of which shall be occupied and used by Unit Owners and Occupants for residential and residential rental purposes only, or such other uses permitted by applicable zoning ordinances.

Section 3.20 Restricted Common Elements. “Restricted Common Elements” means a Common Element as shown on the Condominium Plat and as reserved for the exclusive use of the Association as designated by the Board. Restricted Common Elements may be referred to herein and on the Condominium Plat as “Restricted Common Element” or “RCE”.

Section 3.21 Unit or Condominium Unit. “Unit” or “Condominium Unit” means those certain individual air spaces as designated and delineated on the Condominium Plat. Each Unit shall consist of that part of the Building as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and window frames, doors and door frames, and trim, as shown and numbered on the Condominium Plat. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished surfaces. All other portions of the walls, floors or ceilings (including common walls to separate Units) shall be a part of the Common Elements. In addition, each Unit shall include the following: (a) all spaces, nonbearing interior partitions, windows, window frames, exterior doors, door frames and all other fixtures and improvements within the boundaries of the Unit; (b) all outlets, lines and ducts of utility service lines, including but not limited to power, light, gas, hot and cold water, heating and waste disposal, within the boundaries of the Unit; and (c) all heating, hot water and air conditioning apparatus exclusively serving the Unit. The interior surfaces of a perimeter window or door means such surfaces at the

points at which they are located when such windows or doors are closed; the physical windows and doors themselves are part of the Common Element as herein defined.

ARTICLE IV. LIMITED COMMON ELEMENTS

Section 4.1 Residential Limited Common Elements. The following shall constitute Limited Common Elements - Residential for the exclusive use of all Residential Units in the proportions set forth in Exhibit "A":

(a) All of the corridors, elevator shafts and stairwells to the Residential Units and the elevator lobbies.

(b) All mechanical rooms and equipment, pipes, ducts, flues, chutes, conduits, wires and other utility installations or outlets, to the extent they serve only Residential Units.

Section 4.2 Exclusive Limited Common Elements. Terraces appurtenant to Units 301 and 302 shall constitute Limited Common Elements for the exclusive use of the specific Unit to which they are appurtenant. In addition, any Parking Space assigned as a Limited Common Element - Parking shall pertain to the specific Unit or Units of the Owner(s) and shall constitute Exclusive Limited Common Elements for the exclusive use of the Owner(s). Parking spaces assigned to the Deed Restricted Units will in perpetuity remain specifically assigned for the exclusive use of Owners of the Deed Restricted Units.

ARTICLE V. STATEMENT OF INTENTION AND PURPOSE

Section 5.1 Declaration. Declarant hereby declares that the Project and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied, and improved and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in Article I and are further declared to be for the benefit of the Project and every part thereof and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens to the Declarant and its assigns and to all persons hereafter acquiring or owning any interest in the Project, however such interest may be obtained.

Section 5.2 Reservation of Rights. The following rights are hereby reserved for the benefit of Declarant: (i) to complete the improvements indicated on the Condominium Plat; (ii) to create restrictions on the uses of Commercial Units through a separate recorded instrument prior to the sale of the Commercial Unit(s) by Declarant to a person/entity not affiliated with the Declarant; (iii) to maintain signs advertising the Condominium; (iv) to use easements through the General Common Elements; (v) to grant easements through the General Common Elements for the benefit of property and Units annexed into the Condominium; (vi) to elect, appoint or remove members of the Board until seventy-five percent (75%) of all existing Units are sold; (vii) to annex additional property and Units to the Condominium at any

time up to five years after the effective date of this Declaration; (viii) to grant in connection with such annexation temporary construction easements as necessary to accommodate construction of or on any annexed property. For purposes of annexing additional property into the Condominium regime established by this Declaration, the Unit Owners hereby irrevocable appoint the Declarant their attorney-in-fact for purposes of amending the schedule of percentages of ownership in the Common Elements depicted on **Exhibit "A"** hereto.

ARTICLE VI. NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

Section 6.1 Estates of an Owner. The Project is hereby divided into Condominium Units, each consisting of a separate interest in a Unit and an undivided interest in common in the General and Limited Common Elements in accordance with the Condominium Plat which sets forth the General Common Elements appurtenant to each Unit. The percentage of ownership interest in the General Common Elements which is to be allocated to each Unit for purposes of taxes, assessments and other charges under Wyoming statute § 34-20-104(a) and for purposes of liability shall be the same as set forth on **Exhibit "A"**. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. The legal description of each Unit shall be as provided in Article VII herein and as shown on the Condominium Plat.

Section 6.2 Right to Combine Units. Declarant reserves the right to physically combine the area or space of one Unit with the area or space of one or more adjoining Units. Such combination shall not prevent separate ownership of such Units in the future. Declarant reserves the right to designate and convey to any purchaser of such combined Units as additional Limited Common Elements any walls, floors, or other structural separations between Units so combined, or any space which would be occupied by such structural separations but for the combination of the Units. Such structural separations and such space shall automatically become Common Elements if the combined Units become subject to separate ownership in the future.

Section 6.3 Title. Title to a Condominium Unit may be held or owned by an entity and in any manner in which title to any other real property may be held or owned in the state of Wyoming.

Section 6.4 Inseparability. No part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be separated from any other part thereof during the period of Condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Elements shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium Unit or any part hereof shall be presumed to be a gift, devise, request, transfer, encumbrance, or conveyance, respectively, of the entire Condominium Unit, together with all appurtenant rights created by law or by this Declaration.

Section 6.5 Partition Not Permitted. The General Common Elements shall be owned in common by all owners of Units and no owner may bring any action for partition

thereof.

Section 6.6 Owner's Right to General Common Elements and Limited Common Elements. Subject to the limitations contained in this Declaration, each Owner shall have the nonexclusive right to use and enjoy the General Common Elements and as applicable the Residential Limited Common Elements and the Commercial Limited Common Elements. Each Owner shall have the exclusive right to use and enjoy the Exclusive Limited Common Elements designated herein for exclusive use by such Owner.

Section 6.7 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium Unit and the appurtenant Common Elements. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against his/her Condominium Unit, or interest therein, or his/her interest in the General Common Elements or any part of any or all of the foregoing. Each Owner shall pay all taxes, rates, impositions, and assessments levied against the Project or any part of the General Common Elements in proportion to her/his interest in the General Common Elements, such payment to be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at eighteen percent (18%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien created by Section 11.9 hereof. Notwithstanding the foregoing, taxes, assessments, or other charges attributable to the General Common Elements shall be apportioned among the Owners of Units as provided in Article XI hereof.

Section 6.8 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise maintain, clean, refinish, and decorate the interior surfaces of the walls, ceilings, floors, and doors of his/her Unit and to clean the exterior and interior surfaces of the windows, which form the boundaries of his/her Unit, and all walls, ceilings, floors, and doors within such boundaries.

Section 6.9 Easements for Encroachments. If any part of the General Common Elements encroaches or shall hereinafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereinafter encroach upon the General Common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or the Units. Encroachments referred to herein are limited to encroachments caused by engineering errors, settling, rising, or shifting of the earth, or by changes in position caused by construction, repair or reconstruction of the Project or any part thereof in accordance with the original plans for the Project and any encroachment due to building overhang or projection.

Section 6.10 Easements of Access for Repair, Maintenance, and Emergencies

Some of the General Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all General Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the General Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to any Unit or Units. The Association shall also have such right independent of any agency relationship. The President of the Association and the Building Property Manager (if any) shall each have a master key to all Units for the purpose of gaining access to any Unit for repairs, maintenance and emergencies as provided herein. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the General Common Elements or as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all of the Owners of the General Common Elements; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article XI below.

Section 6.11 Owner's Right to Ingress and Egress and Support. Each Owner shall have the right to ingress and egress over, upon, and across the General Common Elements necessary for access to his/her Unit and to the Limited Common Elements designated for use in connection with his/her Unit, and shall have the right to the horizontal and lateral support of his/her Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit.

Section 6.12 Association's Right to Use of General Common Elements. The Association shall have a nonexclusive easement to make such use of the General Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the General Common Elements maintenance and storage facilities for use by the Association

Section 6.13 Easements and Utilities. In order to adequately serve each Unit and the General and Limited Common Elements utility facilities may be constructed and may encroach on a Condominium Unit(s). An easement for such encroachment and for the maintenance of the same shall and does hereby exist.

Section 6.14 Declarant's Right Incident To Construction. Declarant, and persons it shall select, shall have the right to ingress and egress over, upon, and across the General Common Elements, the right to store materials thereon and to make such other use thereof as may be reasonably necessary incident to complete development of the Project.

Section 6.15 Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 6.9, 6.10, 6.11, 6.12, 6.13 and 6.14 above, even though no specific reference to such easements or to those Sections appear in any

such conveyance.

Section 6.16 Parking Spaces. The parking spaces ("Parking Spaces") are reserved by the Declarant until such time as the individual Parking Spaces shall be assigned by the Declarant to an owner of a Condominium Unit for his/her exclusive use. After assignment of Parking Space(s) by the Declarant, the Board may establish rules concerning the use of the Parking Spaces with the exception of those Parking Spaces that will be assigned proportionately, as directed by Teton County Housing Authority in conjunction with The Fair Housing Act, to be utilized exclusively by the Owners of the Deed Restricted Units. The Board shall not have any control over the use or disposition of Parking Spaces not assigned to a Condominium Unit Owner by the Declarant. The Deed Restricted Units' Parking Spaces shall be restricted in perpetuity and not subject to sale, rental or lease agreements. Condominium Unit owners and occupants shall park only in those areas designated as "Tenant/Residential Parking" or "Commercial Parking". Declarant hereby reserves the Parking Spaces 6, 7, 26, 27 and 28 for future development and access to adjacent underground parking yet-to-be-constructed. Parking on the above-ground lot to the west of the Building shall be reserved for Commercial Units only and shall not be used by Owners of Residential Units, their lessees, guests, agents, employees or invitees.

Section 6.17 Use Restrictions on Commercial Units Commercial Units may not be used for restaurant, bar or any other food services purposes at any time.

Section 6.18 Domestic Animals. No animals, including any type of animal not considered to be a common domestic household pet within the ordinary meaning and interpretation of such words, may be kept, maintained or cared for in any Unit.

The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that animals are being kept in violation of this Declaration, or are otherwise a nuisance to other Owners, or that an Owner is otherwise in violation of this Section, and to take such action or actions as it deems reasonably necessary to remedy the violation. The Association may require an Owner, at its own expense, to remove a pet determined by the Association to be kept in violation of this Section ("Nuisance Pet") and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Unit and remove the Nuisance Pet and any such action shall not be deemed a trespass. The Board shall not be responsible for any damage done to a Unit or the Nuisance Pet in removing the Nuisance Pet, and all costs of removing and caring for the Nuisance Pet as incurred by the Board shall be assessed against the Unit owner.

ARTICLE VII. DESCRIPTION OF A CONDOMINIUM UNIT

Every contract for the sale of a Condominium Unit and every other instrument affecting title to a Condominium Unit may describe that Condominium Unit by the number shown on the Condominium Plat and this Declaration as each appears on the records in the Office of the Teton County Clerk, in the following fashion:

Condominium Unit _____ as shown on the Plat of 199 East Pearl Condominium Addition to the Town of Jackson, appearing in the Records in the Office of the Teton County Clerk as Plat

No _____ as defined and described in that Condominium Declaration for 199 East Pearl Condominium Addition to the Town of Jackson recorded in the Records in the Office of the Teton County Clerk.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the General Common Elements and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations on such ownership as described in this Declaration.

ARTICLE VIII. MECHANIC'S LIEN RIGHTS

No Unit Owner shall permit such Owner's Unit interest to be subject to any lien (other than the liens of current real property taxes), claim or charge, the enforcement of which may result in a sale or threatened sale of the interest of any other Unit Owner or any part thereof or in any interference in the use or enjoyment thereof by any other Unit Owner. In the event of a threatened sale of the Common Elements or the interest of any Unit Owner or any part thereof, or should the use and enjoyment of any portion thereof by any Unit Owner be threatened by reason of any lien, claim or charge against the interest of Unit Owner subjecting such other interests to the lien claim (the "Owner in Violation"), or should proceedings be instituted to effect any such sale or interference, any Unit Owner (the "Curing Owner") acting on his or her own behalf or through the Association or the Association acting on behalf of any one or more Unit Owners (if promptly indemnified to his or her or its satisfaction) may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in such event, the Owner in violation shall forthwith pay the amount so paid or expended to the Curing Owner or the Association, whosoever shall have paid or compromised the lien, claim or charge, together with such reasonable attorneys' fees and related costs as the Curing Owner or the Association may have incurred. No Unit Owner shall permit his or her interest in any funds from time to time in possession of the Association to be subjected to any attachment, lien, claim or charge or other legal process and each Unit Owner shall promptly restore any funds held by the Association with respect to his or her Unit interest to the extent depleted by the reason of the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Association for all reasonable attorneys' fees or other costs incurred in respect thereof.

ARTICLE IX. THE ASSOCIATION

Section 9.1 Membership. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium Unit is held by more than one person, the membership related to that Condominium Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium Unit is held. An Owner shall be entitled to one membership for each Condominium Unit owned by him. No person or entity other than an Owner may be a member of the Association, and the Association Bylaws always shall so state and shall in addition state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium Unit. Provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit.

Section 9.2 Voting Rights. The total number of votes which may be cast by all members of the Association shall be set forth in the Association Bylaws, and each Owner shall be entitled to vote in the same percentages as shown on **Exhibit "A"** hereto for ownership of the General Common Elements.

Section 9.3 Transfer. Except as otherwise expressly stated herein, any of the rights, interests, and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owners as set forth herein.

Section 9.4 Amplification. The provisions of this Article are amplified by the Association Bylaws; provided, however, that no present or future provision of such Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

ARTICLE X. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 10.1 The Management Body. The Association shall administer the Project in accordance with the Act, the Association Bylaws and the provisions of this Declaration.

Section 10.2 Adoption of Bylaws. Upon the execution and the filing of this Declaration, the Declarant shall adopt the Association's Bylaws.

Section 10.3 The General Common Elements. The Association, subject to the rights of the Owners set forth in Section 4.2 hereof, shall be responsible for the exclusive management and control of the General Common Elements, including Limited Common Elements, and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order and repair; however, each Owner of a Unit shall keep the Exclusive Residential Limited Common Area designated for use in connection with his/her Unit in a clean, sanitary, and attractive condition, and shall maintain and repair the heating and air conditioning equipment and water heater servicing her/his Unit exclusively. The Association shall be responsible for the maintenance and repair of exterior surfaces of the Building and improvements located on the Project, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, the maintenance and repair of other General Common Elements, including utility lines and all other improvements or materials located within or used in connection with the General Common Elements. The Association shall maintain in a proper, first-class manner all landscaping and natural vegetation on the Project. The specification of duties of the Association with respect to a particular General Common Element shall not be construed to limit its duties with respect to other General Common Elements as set forth in the first sentence in this Section. The cost of such management, maintenance, and repair by the Association shall be borne as provided in Article XI.

The Association shall have the right to grant easements for utility purposes over, upon,

across, under, or through any portion of the General Common Elements and each Owner hereby irrevocably appoints the President of the Association as their attorney-in-fact for such purpose

Section 10.4 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish electrical, water, sewer, trash collection services, and other common services to each Unit.

Section 10.5 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the General Common Elements. Such interest shall not be transferable except with the transfer of a Condominium Unit. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hundering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium Unit under a foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium Unit.

Section 10.6 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units and the General Common Elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations or with any other obligations of such Owner under this Declaration. The Association may also take judicial action to the extent permitted by law against any Owner to enforce compliance with such rules, regulations, or other obligations; or to obtain damages for noncompliance; or to obtain extraordinary relief not available at law, such as injunctive relief, when remedies at law are insufficient to afford the appropriate relief to the parties.

Section 10.7 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Association Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE XI . ASSESSMENTS

Section 11.1 Budgeting for Assessments. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 11.2

The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Condominium Units, and the amount to be generated through the levy of periodic assessments.

The Association is hereby authorized to levy periodic assessments against all Units subject to assessment under this Article in the ownership proportions provided in Section 11.5 herein to fund the Common Expenses. In determining the periodic assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Condominium Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the final budget, together with notice of the amount of the periodic assessment to be levied pursuant to such budget, to each Owner not less than thirty (30) nor more than sixty (60) days prior to the effective date of such budget. Such budget and assessment shall automatically become effective unless objected to in writing by an Owner within 10 days of the effective date of the budget. In the event an Owner objects in writing in a timely manner to the budget or the amount of the periodic assessment levied thereunder, the Board shall notify all Owners of such objection and the basis thereof and call a special meeting of the Association to address the objection and present the issue to a vote of the Association.

Failure of the members to approve a budget or failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

The Board may revise the budget and adjust the periodic assessment from time to time during the year, subject to the notice requirements provided for herein.

Section 11.2 Budgeting for Reserves. The Board shall prepare and review at least annually a reserve budget for capital expenses of the Association. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to this Article, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

Section 11.3 Agreement to Pay Assessment. Declarant, for each Condominium owned by it within the Project, and for and as the Owner of the Project and every part thereof hereby covenants, and each Owner of any Condominium by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association periodic assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be

fixed, established, and collected from time to time in the manner provided in this Article.

Section 11.4 Amount of Total Periodic Assessments. The total periodic assessments against all Condominium Units shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the General Common Elements or furnishing electrical, water, sewer, and trash collection services, and other common services to each Unit, to the extent not separately metered and/or billed to a specific Unit, which estimates may include, among other things, expenses of management; taxes and special assessments, until the Condominium Units are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; landscaping and care of grounds; common lighting and heating; water charges; trash collection; sewer service charges, repairs and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking funds; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

Section 11.5 Apportionment of Periodic Assessments. Upon issuance of a certificate of substantial completion of the Project and as each Unit is sold or occupied for residential or commercial use, the expenses attributable to the General Common Elements and to the Project as a whole, except as otherwise provided herein, shall be apportioned generally among all Owners in proportion to the interest in the General Common Elements owned by each Owner as set forth on **Exhibit "A"** hereof. Notwithstanding the foregoing, the expenses of the General Common Elements and the Project shall be charged to the Owners as follows:

(a) **Commercial Units.** All maintenance, repair, replacement and furnishing of the Commercial Limited Common Elements and all common utilities and services rendered to the Commercial Units and to Limited Common Elements pertaining to such Commercial Units, to the extent the same can be reasonably allocated to the Commercial Units, shall be apportioned to each Commercial Unit in proportion to the interest of the particular Commercial Unit in the Commercial Limited Common Elements, as set forth in **Exhibit "A"**.

(b) **Residential Units.** All maintenance, repair, replacement and furnishing of the Residential Limited Common Area and all common utilities and services rendered to Residential Units and to Limited Common Elements pertaining to Residential Units, to the extent the same can be reasonably allocated to the Residential Units, shall be apportioned to each Residential Unit in proportion to the interest of the particular Residential Unit in the Residential Limited Common Elements, as set forth in **Exhibit "A"** with exception of certain allowances as outlined on **Exhibit "B"** for the Deed Restricted Units. In no event shall apportionment of assessments on Deed Restricted Units include any charge for a service or utility that is not actually consumed by or provided to the Deed Restricted Unit.

(c) **All Units.** All general/administrative expenses, including management fees, supplies and office services and legal and accounting expenses and all common expenses other than those referred to in paragraphs (a) and (b) above or not otherwise provided for, including the costs of maintaining the General Common Elements, the Restricted Common