

**CONDOMINIUM DECLARATION**

**FOR**

**EIBANDS LUXURY CONDOMINIUMS**

## TABLE OF CONTENTS

ARTICLE I	Definitions .....	1
Section 1.1	Terms Defined .....	1
ARTICLE II	General Provisions .....	8
Section 2.1	Creation of Units, Map.....	8
Section 2.2	Allocation of Interests in Common Elements .....	9
Section 2.2	Inseparability of Units; No Partition.....	9
Section 2.4	Permissible Relationships; Description .....	9
Section 2.5	Obligations of Owners and Units .....	10
Section 2.6	Mortgage of Unit .....	10
ARTICLE III	Uses, Reservations and Restrictions.....	11
Section 3.1	Permitted Use .....	11
Section 3.2	Leases.....	11
Section 3.3	Storage Spaces.....	11
Section 3.4	Parking .....	11
Section 3.5	Compliance with Governing Documents.....	11
Section 3.6	Declarant Reservations and Rights.....	12
Section 3.7	Easements.....	13
Section 3.8	Occupancy Restrictions.....	14
Section 3.9	Life-Safety Systems.....	16
Section 3.10	Mitigation of Dampness and Mold .....	16
ARTICLE IV	Matters Regarding the Association .....	17
Section 4.1	General .....	17
Section 4.2	Allocation of Votes in the Association .....	17
Section 4.3	Suspended Voting Rights.....	17
ARTICLE 5	Maintenance, Alterations, Taxes and Utilities.....	17
Section 5.1	Maintenance .....	17
Section 5.2	Additions, Alterations or Improvements by Owner .....	23
Section 5.3	Mechanic's Liens; Indemnification.....	24
Section 5.4	Taxes .....	25
Section 5.5	Utilities.....	26
ARTICLE VI	Insurance.....	26
Section 6.1	Insurance .....	26

## TABLE OF CONTENTS

Section 6.2	Insurance by Association .....	26
Section 6.3	Insurance by Owners.....	26
Section 6.4	Other .....	27
Section 6.5	Insurance Trustee.....	27
ARTICLE VII	Assessments .....	28
Section 7.1	Monthly and Special Assessments by Association.....	28
Section 7.2	Individual Assessments.....	29
Section 7.3	Obligation to Pay Assessments .....	29
Section 7.4	Lien to Secure Payment of Assessments.....	30
Section 7.5	Commencement of Obligation to Pay Assessments .....	30
Section 7.6	Redemption by Owner .....	31
Section 7.7	Notice of Default .....	31
Section 7.8	Alternative Actions .....	31
ARTICLE VIII	Loss and Obsolescence .....	31
Section 8.1	Loss or Damage .....	31
Section 8.2	Damaged Units .....	32
Section 8.3	Matters Relating to Restoration and Repairs.....	32
Section 8.4	Obsolescence of the Common Elements.....	32
Section 8.5	Obsolescence of the Property .....	33
Section 8.6	Association as Attorney-in-Fact .....	33
ARTICLE IX	Condemnation .....	33
Section 9.1	General Provisions.....	33
Section 9.2	Taking of One Unit.....	34
Section 9.3	Taking of the Common Elements .....	34
Section 9.4	Taking of Multiple Units.....	35
Section 9.5	Complete Taking of Entire Property.....	35
Section 9.6	Payment of Awards and Damages .....	36
Section 9.7	Association as Attorney-in-Fact .....	36
ARTICLE X	Development Period .....	36
Section 10.1	Initial Directors.....	36
Section 10.2	Period of Declarant Control .....	36
Section 10.3	Working Capital Contributions .....	37

TABLE OF CONTENTS

ARTICLE XI Matters for Mediation and Arbitration ..... 37

    Section 11.1 Mediation ..... 37

    Section 11.2 Final Offer Arbitration ..... 37

    Section 11.3 Exclusive Remedy ..... 38

ARTICLE XII Miscellaneous..... 38

    Section 12.1 Sound Transmission Disclaimer ..... 38

    Section 12.2 Revocation or Termination of Declaration..... 39

    Section 12.3 Amendment to Declaration ..... 39

    Section 12.4 Partial Invalidity ..... 39

    Section 12.5 Conflicts ..... 40

    Section 12.6 Captions and Exhibits ..... 40

    Section 12.7 Usury ..... 40

    Section 12.8 Use of Number and Gender..... 40

    Section 12.9 Governing Law ..... 40

    Section 12.10 Notice ..... 41

    Section 12.11 Estoppel Certificates ..... 41

    Section 12.12 Security ..... 42

    Section. 12.13Covenants Running With the Land..... 42

    Section 12.14 Covenant of Further Assurances..... 43

    Section 12.15 No Partition ..... 44

    Section 12.16 Correction of Errors..... 44

ARTICLE XIII Provisions Applicable to Mortgagees..... 44

    Section 13.1 Notice To Mortgagees..... 44

    Section 13.2 Cure Rights..... 45

    Section 13.3 No Invalidity of Mortgage Lien..... 45

    Section 13.4 Mortgagee Requirements ..... 45

    Section 13.5 Unpaid Assessments ..... 45

    Section 13.6 Books and Records ..... 45

    Section 13.7 Priority of Rights ..... 46

    Section 13.8 Required Percentage ..... 46

**CONDOMINIUM DECLARATION**  
**FOR**  
**EIBANDS LUXURY CONDOMINIUMS**

This Condominium Declaration is made and established on June 1, 2006, by Declarant;

**RECITALS:**

- A. Declarant is the fee simple owner of the Property.
- B. Declarant desires to create a Condominium pursuant to the provisions of the Act.
- C. Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of Condominium Units and the appurtenant undivided interests in the Common Elements.

NOW, THEREFORE, Declarant does hereby submit the Property to the provisions of the Act and the Condominium established hereby, and does hereby publish and declare that the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations and obligations are hereby established and shall be deemed to run with the Property and shall be a burden and benefit to Declarant, the Association, the Owners and their respective heirs, legal representatives, successors and assigns:

**ARTICLE I**

**Definitions**

**Section 1.1 Terms Defined.** As used in this Declaration, the following terms shall have the meanings set forth below, provided that those capitalized terms not expressly defined herein shall have the same meaning as defined in the Declaration:

"Access Easement." A perpetual, irrevocable, assignable and non exclusive easement as more particularly described in Section 3.7(a) of this Declaration.

"Acquired Property." Shall have the meaning set forth in Section 13.2 of this Declaration.

"Act." The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.

"Affiliate." As defined in Section 82.003(1) of the Act.

"Allocated Interests." The undivided interests of each Owner in the Common Elements and the Common Expenses allocated to each Unit as reflected on Exhibit "C" attached to this

Declaration, as may be reallocated in accordance with the Reallocation Percentages as required from time to time pursuant to this Declaration.

"Articles." The articles of incorporation of the Association filed with the Secretary of State of Texas, as amended from time to time.

"Assessments." Monthly Assessments, Special Assessments and Individual Assessments, due to the Association by an Owner, or levied against a Unit by the Association.

"Association." Eibands Luxury Condominiums Association, Inc., a Texas non-profit corporation organized under the Act and created for the purposes and possessing the rights, powers and authority set forth of this Declaration and in the Articles.

"Board of Directors." The board of directors (sometimes herein referred to as the "Board") of the Association named in the Articles and their successors as duly elected and qualified from time to time.

"Budget." A budget prepared by the Association that includes the anticipated Common Expenses and Charges for the Property for the ensuing year.

"Building." The structure located on the Property, as shown on the Map, and described on Exhibit "A" attached to this Declaration which structure contains the Units, including all Common Elements thereof but excluding those elements otherwise within the definition of a Unit.

"Bylaws." The bylaws of the Association, as amended from time to time, adopted by the Board of Directors.

"Charges." Any costs, expenses, dues, interest fees, late fees, fines, collection costs, attorney's fees and any other sums arising under the Governing Documents owing to the Association.

"Common Elements." The Limited Common Elements and the General Common Elements.

"Common Elements Easement." A perpetual, irrevocable, assignable and non-exclusive easement as more particularly described in Section 3.7(b) of this Declaration.

"Common Expenses." Expenses for which the Association is responsible, including: (i) the Expenses; (ii) those insurance coverages as may be maintained by the Association as described in Section 6.2 of this Declaration; (iii) Governmental Impositions levied against the Common Elements; (iv) utilities related to the Common Elements; (v) professional services for the Association, such as management, accounting and legal services; and (vi) such other costs and expenses as may be incurred by the Association with respect to the proper maintenance, care, operation, management and administration of the Association and the Common Elements.

"Condominium." The form of real property established by this Declaration with respect to the Property, in which portions of the Property are designated for individual ownership or

occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the Owners of such portions, and initially consisting of twenty-four (24) Residential Units and one (1) Retail Unit, each a Condominium Unit.

"County." Galveston County, Texas.

"Declarant." Gal Gate, LLC, a Texas limited liability company, and its successors and assigns, having the rights, powers, authority and obligations described in this Declaration evidenced by a written instrument filed for record in the real property records of the County assigning the rights, powers, authority and obligations of Declarant under this Declaration.

"Declarant Control." The period commencing on the date of this Declaration and continuing until one hundred twenty (120) days after the date that deeds to not less than 75% of the Units have been recorded in the real property records of the County, subject, however to the provisions of Section 10.2.

"Declarant's Mortgagee." Any Person that is the holder of the Lien Indebtedness of Declarant.

"Declaration." This Condominium Declaration for Eibands Luxury Condominiums and all recorded amendments thereto, which Declaration and all amendments thereto, shall be recorded in the real property records of the County.

"Development Rights." A right or combination of rights: (i) to make and record corrections to the Map to conform the Map to the actual location of the Improvements, the actual size and location of the Units and/or the proper designation of the elements of the Improvements as Units or Common Elements; (ii) to create Units or Common Elements within the Condominium and (ii) to convert Units into Common Elements or convert Common Elements into Units. The Development Rights so reserved may be exercised by Declarant to the extent and only if permitted by the Act and at all times while Declarant owns any Unit or other real property interest in the Condominium, or for such lesser time as may be permitted by the Act.

"Dispute." Any claim, grievance or other dispute arising out of or relating to: (i) the interpretation, application or enforcement of the Governing Documents; (ii) any conflict or dispute arising between or among two or more Owners; (iii) the proper party to bear a maintenance cost or expense or a capital expenditure or the proper amount of the expense, fee or Assessment to be charged or collected; (iv) the rights, obligations and duties of any Owner under the Governing Documents; (v) the transfer of control of the Association by the Declarant to the Owners or the physical condition of the Limited Common Elements and/or the Building, which claim, grievance or other dispute maybe asserted against the Declarant only by the Association, but also if attempted to be asserted against the Declarant or the Association of any officer or director thereof by an Owner; (vi) the authority of the Association or Declarant under any Legal Requirement or under the Governing Documents to: (a) require any Owner to take any action or not to take any action involving its Unit; or (b) alter, subtract from or add to the Common Elements or the Condominium; (vii) the interpretation or enforcement of any warranty; or (viii) the failure of the Association, in accordance with Legal Requirements and the Governing Documents, to: (w) properly conduct elections; (x) give adequate notice of meetings or actions;

(y) properly conduct meetings; or (z) allow inspection of books or records. The following shall not be considered "Disputes" unless all parties shall otherwise agree to submit the matter to mediation or arbitration, as applicable, pursuant to Article XI of this Declaration: (i) any suit by the Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the Association's ability to enforce the provisions of the Governing Documents; (ii) any suit between Owners which does not include the Declarant, or the Association, if such suit asserts a Dispute which would constitute a cause of action independent of any of the Governing Documents; (iii) any disagreement that primarily involves title to any Unit or Common Elements or (iv) any suit in which the applicable statute of limitations would expire within one hundred eighty (180) days of the giving of notice as provided in Article XI of this Declaration unless the Persons against whom the Dispute is made agree to toll the statute of limitations for a period of time necessary to comply with Article XI of this Declaration.

"Easements." Collectively, the Access Easement, Common Elements Easement and Systems Easement.

"Expenses." Expenses allocated to the Owners under this Declaration for which each Owner is responsible for its proportionate share in accordance with its Allocated Interest, including the Owner's portion of those expenses incurred by the Association for (i) maintenance and repair of the Common Elements, (ii) casualty, public liability and other insurance coverage required to be maintained on the Common Elements by the Association, (iii) Governmental Impositions levied and assessed against the Common Elements and (iv) the Owner's portion of all other Assessments described in this Declaration.

"General Common Elements." All portions of the Common Elements that are not the Limited Common Elements. The General Common Elements shall be and include all of the Property and Building except the Units (as defined herein) and shall include, without limiting the generality of the foregoing, all improvements located or to be located on the Property; foundations; supporting columns; girders; beams; slabs; supports; load-bearing walls; shear walls; exterior glass walls; dividing walls between two or more Units or between such Units and Common Elements; roofs; halls; lobbies; walkways; stairs; stairways; fire escapes; entrances and exits of the Building; grounds, if any; all approaches, entrances and exists thereto and therefrom; swimming pool; fitness room and wet areas appurtenant thereto; managerial and security offices, if any; mailrooms; areas used for storage of janitorial supplies, maintenance equipment and materials; trash chute; parking gate; locking mechanism for walk-thru gate; cable television lines, converters, conduit and facilities, telecom rooms, if any; electrical lines and cables up to an including the point of entry into the breaker boxes of a Unit; plumbing fixtures, pipes and lines installed in the walls of the Building or of a Unit that do not exclusively serve a particular Unit, including power, light, water, chilled and heated water lines, heating, air conditioning (including "air handlers" and fan coil units not located within a Unit) and waste collection facilities; elevators; tanks; pumps, motors; fans; compressors; ducts; sidewalks; and in general all apparatus and installations existing for the common use or necessary or convenient to the operation, maintenance and use of the Property, the Building and all other improvements located or to be located on the Property as a condominium; and all repairs and replacements of or additions to any of the foregoing.



"Governing Documents." Individually and collectively, the Act, this Declaration, the Articles, the Bylaws and the Regulations.

"Governmental Impositions." All real estate and personal property taxes, charges, assessments, standby fees, excises and levies and any interest, costs or penalties with respect thereto, general and special ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Condominium or any Unit therein by any Legal Requirement.

"Improvements." The Building, including their infrastructure and Structure, and the pavement, fencing, landscaping, facilities, Systems and man-made objects of every type, existing or in the future placed on the Property, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Individual Assessments." Assessments levied by the Association against one or more but less than all Owners pursuant to Section 7.2 of this Declaration.

"Insurance Proceeds." Any and all proceeds that the Association or an Owner is entitled to receive from an insurance company as a result of a casualty loss, including such proceeds in connection with a casualty loss to a Unit or the Common Elements.

"Insurance Trustee." The Association acting as a trustee in connection with the Insurance Proceeds.

"Legal Requirements." Any and all then-current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any federal, state or municipal authority or any quasi-governmental authority in any way applicable to any Owner's use and enjoyment of the Condominium, or any Unit, including the Restrictive Covenants, zoning ordinances, subdivision and building codes, flood disaster laws and applicable architectural barrier, health and environmental laws and regulations.

"Lien Indebtedness." Any bona fide indebtedness, which is the result of an arm's length negotiation, that is secured by a lien or encumbrance upon a Unit.

"Limited Common Elements." Those portions of the Common Elements that are allocated by this Declaration and the Map for the exclusive use by one or more, but less than all of the Units, including, without limitation, a) if any chute, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a Unit, and the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, and the portion serving more than one Unit or the Common Elements is a part of the General Common Elements; b) if any shutters, awnings, window boxes, fire shutters, if applicable, and exterior doors and window or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit; c) stairways, the use of which is limited to certain Units as shown on the Map; d) Parking Spaces and Storage Spaces shall be Limited Common Elements for the exclusive use of the Unit Owner of the Unit to which they are assigned of record by the Declarant; e) storm windows and storm doors, if any, will be Limited Common Elements of the

Unit which they service and f) mailboxes, name plates and exterior lighting affixed to the Building, if any, will be Limited Common Elements allocated to the Units served.

"Maintenance Standard." Maintenance in good repair in an attractive and clean condition, including the operation, upkeep, repair and restoration, ordinary wear and tear excepted, to the extent necessary to maintain the Condominium or the Units, as applicable, in a condition reasonably suitable for its intended purpose.

"Manager." Any professional manager or management company with whom the Association contracts for the day-to-day management of either or both of the Condominium or the administration of the Association.

"Map." The plats and plans in Exhibit "B", attached to this Declaration and made a part of this Declaration, including a survey plat of the Property and dimensional drawings that horizontally and vertically identify and describe the Units and describe the Common Elements.

"Monthly Assessment." Assessments established and collected by the Board of Directors pursuant to Article VII of this Declaration for payment of the Common Expenses and other Charges when due.

"Mortgagee." Any Person, including Declarant's Mortgagee, so long as Declarant is an Owner, that is the holder of Lien Indebtedness and which has provided the Association with written notice of its name, address and description of the Unit encumbered by such Lien Indebtedness.

"Owner." Any Person (including Declarant) owning fee title to a Unit, which Unit includes an undivided interest in the Common Elements, but excluding a Person having an interest in a Unit solely as security for an obligation.

"Parking Lot." The above-ground parking lot located at 2220 Church Street, Galveston, Texas 77550, as shown on the Map.

"Parking Spaces." Those portions of the Parking Lot used exclusively for the parking of automobiles by the Owners and which are designated as a Limited Common Element appurtenant to Units, as more particularly described in Section 3.4 of this Declaration, as shown on the Map.

"Past Due Rate." The maximum lawful rate of interest under Texas law or, if no maximum lawful rate exists, the rate of 18% per annum.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any public or governmental body, agency or instrumentality and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Property." The Units and the Common Elements.

"Reallocation Percentage." The percentage of the undivided interest of each Owner in the Common Elements, as set forth on a Supplemental Declaration, determined by dividing (i) the square footage of a Unit by (ii) the combined total square footage of all of the Units which measurement of the square feet within each Unit shall be done in the same manner as the measurement used to establish the initial Allocated Interests set forth on Exhibit "C", attached to this Declaration.

"Regulations." The Rules and Regulations for the Eibands Luxury Condominiums, adopted by the Board of Directors of the Association, as amended from time to time.

"Rents." Any and all rental or other income received by an Owner in connection with the leasing of a Unit or the granting or licensing of a right to use all or any portion of such Unit.

"Retail Unit." The Unit designated as a retail unit on the map, comprising approximately 9,676 square feet on the first floor of the Building.

"Special Assessments." Assessments established and collected by the Association pursuant to Article VII of this Declaration for payment when due of costs relating to the repair and restoration of the Common Elements, and for payment of non-recurring Common Expenses, when due.

"Special Declarant Rights." Rights reserved for the benefit of Declarant to (i) exercise any Development Right; (ii) use any Easement for the purpose of making improvements within the Condominium or on the Property; (iii) appoint or remove any officer or board member of the Association during the period of Declarant Control; and (iv) exercise the rights and powers enumerated in Section 3.6 of this Declaration.

"Storage Spaces." Those approximately 24 storage closets located on the first floor used exclusively for the storage of items by the Owners, as more particularly described in Section 3.3 of this Declaration, and which are Limited Common Elements as shown and numbered on the Map.

"Structure." All foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods and including any and all other structural components that support, uphold or are a part of the Building.

"Supplemental Declaration." An instrument executed by Declarant and recorded in the real property records of the County for the purpose of modifying the Allocated Interests, adding to the Condominium, withdrawing any portion thereof from the effect of this Declaration or for such other purposes as are provided in this Declaration.

"Systems." All fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage and audio and video signals, including the main switch gear conduits, plumbing chases and mechanical shafts on the Property.

"Systems Easement." A perpetual, irrevocable, assignable and non-exclusive easement as more particularly described in Section 3.7(c) of this Declaration.

"Taking." The taking or threat of taking of all or a portion of the Property for any public or quasi-public use, by eminent domain proceedings or otherwise, by a governmental agency or quasi-governmental agency or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of the Property in lieu thereof.

"Tenant." Any Person having the right to occupy a Unit pursuant to a lease granted by an Owner.

"Unit." The physical portion of the Condominium that is designated for separate ownership or occupancy (the boundaries of which Unit are depicted on the Map) with the unrestricted right of ingress thereto and egress therefrom, together with an undivided interest, appurtenant to such Unit, in and to the Common Elements, and included within the boundaries of each Unit, without limitation, shall be any finishing materials applied or affixed to the interior surfaces of the interior walls, floors or ceilings (such as, but without limitation, paint, wallpaper, wall or floor coverings and carpets); interior walls and doors separating rooms within Unit; and all utility pipes, lines, systems, fixtures or appliances servicing only that Unit, including, without limitation, hot water heaters, chilled and heated water pipes, air handlers, fan coil units and all visible and exposed plumbing fixtures, lines and pipes within the boundaries of a Unit. It is expressly stipulated, and each and every purchaser of Unit, its heirs, executors, administrators, assigns, successors and grantees hereby agree, that the square footage, size and dimensions of each Unit as set out and shown in this Declaration or in the Maps attached as exhibits hereto 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 by the Maps attached hereto. No Owner or purchaser of a Unit shall have any claim, demand or other action against the Declarant on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the Maps attached hereto. Timeshare estates or interests will not be created with respect to any of the Units in the Condominium.

"Working Capital Contribution." An amount equal to the Monthly Assessment multiplied by two to be contributed to the Association by each Owner (but not the Declarant) as provided in Section 10.3 of this Declaration.

## ARTICLE II

### General Provisions

#### **Section 2.1 Creation of Units, Map.**

(a) The Property is hereby divided into fee simple estates composed of separately designated Units and each such Unit's undivided interest in and to the Common Elements. Each Unit, together with such Unit's undivided interests in the Common Elements, is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Declaration in the

condominium records of the County and shall continue until this Declaration is revoked or terminated in the manner provided in this Declaration.

(b) The Map sets forth, among other things, the following: (i) a general description and diagrammatic plan of the Condominium; (ii) the location and dimension of all real property subject to the Development Rights; (iii) all major improvements to the Units, showing its location within the Buildings, the floor and the number of the Unit and, by identifying unit number as applicable, the Limited Common Elements appurtenant thereto; (iv) the location of the Parking Spaces and Storage Spaces designated for use by the Owners; and (v) such other information as is desirable or required pursuant to the Act, including a certification as to compliance with the Act. The measurements set forth on the Map as to each Unit are approximate values taken from the plans and specifications for the Property and may not be precisely accurate as to any Unit due to variances in construction and interior floor plans. THE DECLARANT, ANY OWNER, AND THEIR SUCCESSORS, ASSIGNS, OR DESIGNEES SHALL NOT BE LIABLE TO ANY OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL MEASUREMENTS FROM THOSE SET FORTH ON THE MAP OR IN ANY CONDOMINIUM PURCHASE CONTRACT TO WHICH DECLARANT, AND ITS SUCCESSORS, ASSIGNS, OR DESIGNEES, IS OR WAS A PARTY, AND EACH OWNER, BY ACCEPTING A DEED TO A UNIT, WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION AGAINST DECLARANT AND ITS SUCCESSORS, ASSIGNS, OR DESIGNEES.

(c) Notwithstanding anything contained in this Declaration to the contrary, the Owner(s) of the Retail Unit shall have no right to use the General Common Elements, including, without limitation, no right to use the swimming pool, exercise room, lobby, elevators, parking spaces or any Limited Common Elements appurtenant only to other Units. The sole purpose of assigning the Owner of the Retail Unit a percentage interest in Common Elements is for purposes of exercising voting rights and such Owner's entitlement to insurance proceeds and/or condemnation awards, as more particularly described in Articles VIII and IX.

**Section 2.2 Allocation of Interests in Common Elements.** The initial Allocated Interests have been determined by dividing the square footage of each Unit by the aggregate square feet of all Units and the Allocated Interest of each Unit is shown opposite the Unit numbers in Exhibit "C" attached to this Declaration. The Common Elements shall remain undivided. Each Supplemental Declaration filed in order to reflect changes to the actual measurements of any Unit shall include a revised listing of all Units reflecting the Reallocation Percentage opposite the description of the Unit.

**Section 2.3 Inseparability of Units; No Partition.** Each Unit shall be inseparable and shall be acquired, owned, conveyed, transferred, leased and encumbered only as an entirety. In no event shall a Unit be subject to physical partition and no Owner shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such Common Elements are allocated is void *ab initio*.

**Section 2.4 Permissible Relationships; Description.**

(a) A Unit may be acquired and held by more than one Person in any form of ownership recognized by the Legal Requirements.

(b) Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Unit shall legally describe such Unit by its identifying Unit designation, followed by the words "Eibands Luxury Condominiums, located in Galveston County, Texas," with further reference to the recording data for this Declaration (including the Map and any amendments to the Declaration). Every such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber or otherwise deal with such Unit, and any such description shall be construed to include all incidents of ownership relating to a Unit.

**Section 2.5 Obligations of Owners and Units.** Upon the filing of this Declaration and the acceptance of a deed to a Unit by an Owner, any and all obligations (including the obligations to pay Assessments as defined in this Declaration), liabilities, limitations, rights, benefits or burdens that are vested, or that may in the future become vested, in or upon the Declarant pursuant to this Declaration are hereby assumed by each Owner and shall automatically be the joint obligations (including the obligations to pay Assessments, as defined in this Declaration), liabilities, rights, benefits or burdens of the Owners and the Units. The Owner of the Retail Unit shall pay a separate Monthly Assessment as determined by the Board of Directors. EACH OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE BOARD OF DIRECTORS AND DECLARANT FROM SUCH OWNER'S SHARE OF ANY AND ALL LIABILITIES, COSTS, EXPENSES (COMMON OR OTHERWISE), CHARGES AND ASSESSMENTS RELATING OR APPERTAINING TO ITS UNIT.

**Section 2.6 Right to Bring Action Regarding Common Elements.** No Owner, individually or collectively with any other Person, including the Owners, shall have the right to assert a claim or institute a cause of action, subject to mediation and arbitration as provided herein, against the Declarant or any officer or director of the Association with respect to any Common Elements, such right to assert a claim or institute a cause of action against the Declarant or any officer or director of the Association being hereby assigned by each Owner to the Association. The Association shall be the sole Person entitled to assert a claim or institute a cause of action, subject to mediation and arbitration as provided herein, against the Declarant or any officer or director of the Association with respect to any Common Elements. The provisions of this Section 2.6 shall not otherwise limit the right of an Owner to assert a claim or institute a cause of action, subject to mediation and arbitration as provided herein, against the Declarant or any other Person with respect to such Owner's Unit.

**Section 2.7 Mortgage of Unit.** An Owner shall be entitled from time to time to mortgage or encumber its Unit by creating a lien covering such Unit under the provisions of a deed of trust, but any lien created thereby shall be subject to the terms and provisions of this Declaration and any mortgagee or other lienholder which acquires a Unit through judicial foreclosure, public sale or any other means shall be subject to the terms and provisions of the Governing Documents. An Owner that mortgages its Unit shall notify the Association, giving the name and address of said Owner's Mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Units."

## ARTICLE III

### Uses, Reservations and Restrictions

**Section 3.1 Permitted Use.** Except for those Units owned by Declarant, the Property shall be subject to the limitations on use, occupancy, architectural standards and other matters as are set forth in the Governing Documents. Additionally, except for those Units owned by Declarant, the following use restrictions apply to all Units and to the Common Elements:

(a) Except for those activities conducted as part of the marketing and development program of the Declarant, and with respect to the Retail Units, no industry, business, trade or commercial activities other than home professional pursuits without employees, public visits or nonresidential storage, mail or other use of a Unit shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes.

(b) No improper, offensive or unlawful use may be made of the Property. Owners shall comply with and conform to all applicable laws and regulations of the United States and the State of Texas and all ordinances, rules and regulations of the City of Galveston, Galveston County, Texas. The violating Owner shall hold harmless the Association and other Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance.

**Section 3.2 Leases.** Units, Parking Spaces and Storage Spaces may be leased; however: (i) no lease shall be made for transient or hotel purposes, and shall be for a term of at least six (6) months; (ii) such lease shall be in writing, shall state that it is subject in all respects to the provisions of the Governing Documents and shall provide that any failure by the Tenant thereunder to comply with the terms and provisions of Governing Documents shall constitute a default under such lease; (iii) each lease shall be subject to leasing restrictions set forth by the Association in the Governing Documents; (iv) an executed copy of each lease shall be submitted to the Association promptly following execution; and (v) all leases shall be on forms approved by the Association. Parking Spaces and Storage Spaces may be leased only to an Owner or to a Tenant.

**Section 3.3 Storage Spaces.** All Storage Spaces shall be for the use of the Owners for storage purposes only, shall be considered a Limited Common Element, and shall be subject to the procedures and regulations adopted for the same from time to time by the Association, as described in the Regulations.

**Section 3.4 Parking.** All Parking Spaces, shall be considered a Limited Common Element, shall be subject to the procedures and regulations set forth in the rules and regulations adopted for the same from time to time by the Association as described in the Regulations.

**Section 3.5 Compliance with Governing Documents.** Each Owner, by accepting a deed conveying title to a Unit and any Tenant having the right to occupy any portion of a Unit pursuant to a lease granted by such Owner, shall automatically be deemed to have agreed to strictly comply with the provisions of the Governing Documents and all Legal Requirements. A failure or refusal of an Owner to so comply with any such provisions, after written notice, shall

constitute a Dispute that shall be resolved in accordance with Article XI of this Declaration. In addition, an Owner's voting rights in the Association may by written notice be suspended by the Association during the period of such noncompliance.

**Section 3.6 Declarant Reservations and Rights.**

(a) Special Declarant Rights. In accordance with, and only if permitted by the Act, Declarant for itself and its assigns, successors and Designees, reserves the right at all times while Declarant or any Affiliate of Declarant owns any Unit or any other real property interest in the Condominium, to exercise the Special Declarant Rights which include rights to (i) upon completion of the construction of Improvements, file a Supplemental Declaration amending the Map to reflect the actual measurements for each Unit and any other appropriate changes and amendments to Exhibit "C" to reflect the Reallocation Percentage based upon completion of construction; (ii) establish, vacate, relocate and use the Easements as set forth in this Declaration; (iii) include, in any instrument initially conveying a Unit, such additional reservations, exceptions and exclusions as it may deem consistent with and in the best interests of the Owners and the Association; (iv) have and use an easement over, under and across any and all of the Property to the extent that same may be necessary or useful for the exercise of any Special Declarant Rights or the performance of any obligations of Declarant; (v) exercise any Development Right; and (vi) maintain sales, management, or leasing offices in Units for as long as Declarant owns a Unit (or has written agreement with another Owner for the use of such Owner's Unit for such purpose).

(b) Alteration of Units. Declarant reserves the right, by a Supplemental Declaration, to supplement or modify any Unit by adding additional facilities or deleting facilities, to designate additional portions of the Condominium as part of any Unit, or to combine Units. Declarant also reserves the right, without the vote or consent of the Association or any other Owner, to: (i) make alterations, additions or improvements in, to and upon any Unit owned by Declarant or its Affiliates, whether structural or non-structural; or (ii) change the floor plan and layout of any Unit owned by Declarant or its Affiliates.

(c) Sale or Lease Rights. Declarant reserves the right to maintain one or more model units within any Unit in connection with the sale or leasing of Units, in such location as determined by Declarant. No such model unit shall be larger than 2,145 square feet, and Declarant shall have the right to relocate such model unit from time to time. Declarant shall have the right to authorize placement, upon the Common Elements, of signs designating any such model unit and/or a sales or leasing and advertising the sale or leasing of the Units. Such signs may be placed in such locations and shall be of such size and character as Declarant may determine. In the event Declarant elects to lease any unsold Units to third parties, Declarant reserves the right, from time to time, at Declarant's sole expense, to hire a rental management firm for the leasing and operation of such leased Units.

(d) Rights During Warranty Period. For as long as Declarant or its successors, assigns or designees remain liable under any warranty, whether statutory, express or implied, for any act or omission of Declarant, or its successors, assigns or designees in the development, construction, sale and marketing of any portion of the Condominium, the right, in Declarant's, or in its successor's, assign's or designee's sole discretion and from time to time, to enter the



Common Elements and the Units for the purpose of making necessary inspections, tests, repairs, improvements or replacements required for Declarant or its successors, assigns or designees to fulfill any of its warranty obligations, provided that no such entry into a Unit shall unreasonably interfere with the use of such Unit by its Owner. Failure of the Association or any Owner to provide such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing in this Section 3.6(d) shall be deemed or construed as Declarant making or offering any warranty, all of which are disclaimed.

(e) Limitations on Rights. Declarant may not add or delete facilities from any Unit or combine Units, unless Declarant or an Affiliate of Declarant is the owner of such Unit or Units. Additionally, all material changes to the configuration or size of any Unit shall require the approval of the Association. No such additions to, deletions from, or changes of configuration or size of any such Unit, or combination of Units shall affect the interest in the Common Elements, the share of Common Expenses, or the voting rights appurtenant to the Units. Any Units which are combined shall be treated for all such purposes as separate Units. Declarant may separate any Units it has combined, at its sole expense, into separate and distinct Units as originally set forth in the Map. In no event shall any such alteration, improvement or change interfere with any structural support of any Unit or the Common Elements or the provision of utility service to any Unit or the Common Elements. All work done in accordance with the provisions of this Section 3.6 shall be done in compliance with the Governing Documents and all applicable Legal Requirements. Nothing in this Declaration, however, shall obligate Declarant to add to the Condominium or otherwise take any of the actions to which Declarant is entitled pursuant to this Section 3.6.

**Section 3.7 Easements.** Each Owner shall, by virtue of this Declaration, accept the deed to its Unit subject to the Easements reserved and granted in this Section 3.7, which shall be covenants running with the Property, except where otherwise indicated, and shall be for the benefit and in favor of, as applicable, the Owners, Declarant, the Association and their guests, licensees and invitees for all proper purposes.

(a) Access Easement. Declarant hereby grants and reserves an Access Easement over, on and across each Unit as may reasonably be necessary for its own benefit and for the benefit of each Owner, the Association and its agents, employees and representatives, including the Manager and the Manager's agents and employees as the case may be, as may reasonably be necessary for: (i) the use of a Unit by its Owner, provided no other reasonable means of access exists; (ii) the exercise by Declarant of the Special Declarant Rights or the performance of any obligations of Declarant under the Governing Documents; (iii) the maintenance, repair or replacement of any of the Common Elements therein, including any Systems not located exclusively within a Unit or accessible therefrom; (iv) the making of emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit; (v) the evacuation of all or any part of the Property in the event of an emergency; (vi) the police department, fire department, emergency medical services or similar persons in response to an emergency situation; and (vii) such other reasonable purposes as are deemed by the Association to be necessary for the performance of the obligations of the Association as described in the Governing Documents. Each Owner shall provide the Association with a key to its Unit which may be used in such Owner's absence for Unit Access Easement purposes.

(b) Common Elements Easement. Declarant hereby grants and reserves a Common Elements Easement over, on and across the Common Elements for its own benefit and for the benefit of each Owner and the Association for ingress and egress from each Unit, together with the non-exclusive right to use and enjoy the General Common Elements, and the exclusive right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit (subject to the rights of other Owners to use and enjoy such Limited Common Elements if appurtenant to more than one Unit).

(c) Systems Easement. Declarant hereby grants and reserves a Systems Easement over, on and across the Property for its own benefit and for the benefit of each Owner and the Association for the use of and the connection to any portion of the Systems.

(d) Easement for Encroachment. If any portion of the Common Elements encroaches upon any Unit, any Unit encroaches upon any other Unit or upon any portion of the Common Elements, or any encroachment shall hereafter occur as a result of (i) unintentional deviation from the floor plans or Map in the construction of the Improvements, (ii) settling or shifting of the Improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Declarant, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.

**Section 3.8 Occupancy Restrictions**. Subject to the Special Declarant Rights reserved under Section 3.6, the following occupancy restrictions apply to all Units and to the Common Elements:

(a) No Owner shall do any act or permit any act to be done in, on or to any Unit, parking space, or Common Element which will impair the structural integrity, weaken the support or otherwise adversely affect the Building or any Common Element.

(b) No electrical device creating overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Owner who caused it. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(c) All Owners shall maintain their Units in a clean and well maintained condition. No storage of trash will be permitted in or outside any Unit in a manner which may permit the spread of fire, odors, or seepage or the encouragement of vermin.

(d) All fixtures and equipment will be used for the purposes for which they were designed. There shall be no floor load in excess of 50 pounds per square foot, unless special arrangements are made and an engineering determination of floor load capacity in the area of the heavy use is approved by the Association.

(e) A parking space is restricted to occupancy by the owner of the Unit to which the parking space is a Limited Common Element only for parking of automobiles, motorcycles, and

bicycles, and shall not be used for the parking or storage of recreational vehicles, boats or trailers.

(f) Storage of articles is restricted to identified storage areas or the Owner's Unit.

(g) No noxious, offensive, dangerous or unsafe activity shall be conducted in any Unit, nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants. No Owner or occupant shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, comforts or convenience of other Owners or occupants.

(h) No animals, birds or reptiles of any kind shall be kept in a Unit, except for a maximum of two pets, whether dogs of small or medium size at maturity and of gentle disposition, cats or other household pets, as approved and licensed in writing by the Association as compatible with the Condominium. Pets may not be kept for any commercial purposes. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three days' written notice from the Board of Directors. Owner shall hold the Association harmless from any claim resulting from any action of their pets. Seeing eye dogs and hearing ear dogs will be permitted for those persons holding certificates of necessity.

(i) Except for the Declarant's exercise of Special Declarant Rights, no signs, window displays or advertising visible from outside a Unit (except for a name plate or sign not exceeding nine square inches in area, on the main door to each Unit) shall be maintained or permitted in any part of a Unit.

(j) No antenna, satellite dish or other device for the transmission or reception of televisions signals, radio signals or any other form of electromagnetic radiation which is visible from the exterior of a Unit shall be erected, used or maintained on any Unit, except as otherwise expressly permitted by the Board of Directors. The Board of Directors may adopt such other rules and regulations governing the erection and maintenance of antennas and satellite dishes in accordance with federal, state or local ordinance, rule, or regulation for the benefit of the Association and Owners, collectively. No antennae or other similar device unless otherwise permitted by this Section 3.9, shall be affixed to any Unit.

(k) No aluminum foil, reflective film or similar treatment shall be placed on any window within the Condominium. Exterior windows shall be covered by only white shades, blinds or drapes, except for the Retail Units. The window treatment for the Retail Units is subject to the Board of Director's advance written approval.

(l) No window or wall-type air condition shall be permitted to be used, placed or maintained on or in any Unit without the advance written consent of the Board of Directors.

(m) While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article III 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 Retail Unit 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 indemnify, defend and hold Declarant harmless from any claims, losses, expenses (including reasonable attorney's fees), liabilities or damages resulting from Owner's violation of same.

(n) The Retail Unit may be improved and used for commercial, retail and/or office use, at the option and election of Declarant. The Declarant's designation of a Retail Unit as commercial, retail, and/or office shall be effective upon Declarant's delivery of a written use designation to the Board of Directors, which designation shall identify the Retail Unit(s) and indicate whether the Retail Unit(s) has been designated for commercial, retail, or office use and which designation may be recorded by the Owner of such Retail Unit. In the event Declarant designates the Retail Unit(s) as commercial, retail or office, such Retail Unit(s) may not be utilized for the operation of an adult-oriented business which is characterized by an emphasis on matter depicting, describing, displaying, or relating to nudity or partial nudity or sexual activities of any nature, including, but not limited to, adult bookstores, adult arcades, adult theaters, adult novelty shops, adult cabarets, and adult dance lounges. The Retail Unit shall not be used for restaurant purposes, a liquor store or any business which includes the sale of alcoholic beverages for on-premises consumption. The Board of Directors shall not promulgate any rule limiting the hours of operation of any business operating from the Retail Unit. In addition, in no circumstance or event shall any Owner of the Retail Unit designated as commercial, retail, and/or office, and/or any business operated within such Retail Unit, permit noise to exist or operate upon any portion of the Condominium so as to be offensive or detrimental to any other portion of the Condominium or its occupants, which determination shall be made in the sole and absolute discretion of the Board of Directors.

**Section 3.9 Life-Safety Systems.** Owners and Occupants shall not tamper with or disengage any portion of the life-safety systems that serve the Condominium, including, without limitation, the sprinkler heads and all branch and feed lines that support such sprinkler heads, and all fire control devices (such as smoke detectors and call boxes), regardless of whether such items are located within the boundaries of a Unit.

**Section 3.10 Mitigation of Dampness and Mold.** No Unit Owner shall install, within his or her Unit, or upon the Limited Common Elements or Common Elements, non-breathable wall coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over the floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at not greater than seventy-eight degrees (78°) Fahrenheit, to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. Neither Declarant nor the Association make any representations or warranties regarding the existence or development of molds or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same.

## ARTICLE IV

### Matters Regarding the Association

**Section 4.1 General.** The Association has been incorporated as a non-profit corporation under the Texas Non-Profit Corporation Act. In addition to the powers conferred on the Association under the Bylaws and under this Declaration, the Association may take all actions authorized by Section 82.102 of the Act. Any and all actions taken by the Association pursuant to the Governing Documents is binding on all Owners. This Declaration is not intended to place any limitations or restrictions on the power of the Association or the Board of Directors, except as set forth in this Declaration or the Governing Documents.

**Section 4.2 Allocation of Votes in the Association.** Each Owner shall automatically be a member of the Association and shall be entitled to cast one (1) vote for each Unit owned by such Owner. Any matter described in this Declaration as requiring approval by a stated percentage or a majority of the Owners shall be calculated on the basis of one (1) vote per Unit. An Owner may assign its voting rights as a member of the Association to any other Owner by use of a proxy in accordance with the Act.

**Section 4.3 Suspended Voting Rights.** All voting rights of an Owner may be suspended during any period that such Owner is delinquent in the payment of any Assessment duly established pursuant to this Declaration or is otherwise in default under the terms of the Governing Documents. Following Owner's cure of any such delinquency or default in full, its voting rights shall be completely reinstated 24 hours after such cure is effected.

## ARTICLE V

### Maintenance, Alterations, Taxes and Utilities

#### **Section 5.1 Maintenance.**

(a) **By Owner.** Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit, any awning attached to the Retail Owner's Unit as a Limited Common Element, and all improvements made by the Owner to the Limited Common Elements assigned to the Unit except any portion of a Unit which is expressly made the maintenance obligation of the Association as set forth in subparagraph (b) below. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces, windows (excluding exterior cleaning), window frames (except for periodic painting, staining and/or cleaning of the exterior window frames), casings and locks (including caulking of windows); all Limited Common Element hurricane shutters, if any, unless the Board elects to maintain such shutters in accordance with subparagraph (b) below; all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting, staining and/or cleaning of the exterior surface of entry doors and door frames and doorways facing the hallway of the Condominium); all portions of the heating and air conditioning system, including the air conditioning compressor serving the Unit and the fan coil- and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all electricity, water, sewer, or air conditioning pipes, lines, ducts,

conduits, or other apparatus serving only the Unit). Unit Owners shall also be responsible for keeping the interior of his or her Unit free from insects and pests, including the responsibility to hire a professional exterminator when necessary. Additionally, each Unit Owner shall perform maintenance obligations as described in Section 5.1(f) below (“Mold and/or Mildew”) within his/her Unit. All maintenance, repair and/or replacements for which the Owner is responsible and obligated to perform which if not performed, would affect other Units or Common Elements, shall be performed promptly as the need arises.

In addition, each Unit Owner shall have the responsibility:

(i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit.

(ii) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units.

(iii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

(iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Unit Owner, his or her family, tenants or guests, with the cost thereof to be billed to the Owner, which cost shall bear interest at the highest rate permitted by law from the date expended until paid in full.

(b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the “Area of Common Responsibility,” which includes, but is not limited to, the following:

(i) all Common Elements, including any Limited Common Elements but excluding all improvements made to such Limited Common Elements and also excluding any awnings assigned as Limited Common Elements and including all portions of the roof and the roof support systems, including the roof joists and cross braces, even if such roof joists and cross braces are located within a Unit, and including all parking spaces;

(ii) periodic painting, staining and/or cleaning of exterior surfaces of the Building, exterior windows and window frames and entry doors and door frames, on a schedule to be determined by the Board of Directors;

(iii) the life safety system (including but not limited to sprinkler systems) of the Building and other Building systems; and

(iv) the Board has the right in its sole discretion, but not the obligation, to maintain all Limited Common Element hurricane shutters, if any.

Except for the maintenance responsibilities provided in subparagraph (a) above, no maintenance or repair that is the responsibility of the Association shall be performed on or to the Common Elements by an Owner or Tenant (including, but not limited to landscaping of Common Elements) without the written consent of the Board. If any such maintenance or repair is performed by an Owner or Tenant in violation of these covenants, the Owner or Tenant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair and the Owner or Tenant shall be liable to the Association for any resulting damage to the Common Elements.

(c) Limitation of Liability-Generally. Neither the Association nor Declarant shall be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other Person, or resulting from any utility, rain which leaks or flows from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. Neither the Association nor Declarant shall be liable to the Owner of any Unit or such Owner's Tenant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. Neither the Association nor Declarant shall be liable to any Owner, or any Owner's Tenant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Declarant to take some action or perform some function required to be taken or performed by the Association or Declarant under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements by the Association or Declarant, or from any action taken by the Association or Declarant to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(d) Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is

not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Owner does not complete the required maintenance, repair and/or replacement within the time allotted, and if the repair, replacement and/or maintenance is of an item which, if not performed would affect other Units or the Common Elements but which does not create an emergency, the Board may provide such maintenance, repair or replacement at a time agreed upon with the Owner and such cost shall be billed to the Owner as an Individual Assessment. If the Board determines that an emergency exists by virtue of an Owner's failure to maintain, then the Board may enter the Unit and provide the necessary maintenance, repair and/or replacement and such cost shall be billed to the Unit Owner. Any Individual Assessment billed to the Owner pursuant to this subsection may include reasonable administrative fees and shall bear interest at the Past Due Rate from the date expended until paid in full may include reasonable administrative fees.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner, or Tenant or their family, guests, lessees, or invitees, then the Association may bill the Owner for the cost of any such maintenance, repair, or replacement and any such amount billed may include reasonable administrative fees and shall bear interest at the Past Due Rate from the date expended until paid in full.

(e) Measures Related to Insurance Coverage.

(i) The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install and maintain smoke detectors at a mutually agreed upon time, requiring Owners to certify that they have checked the batteries for their smoke detectors, requiring Owners to allow the Association to inspect the smoke detectors and replace batteries if needed by the Board of Directors, requiring Owners to make improvements to the Owner's Unit, and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Three Hundred Dollars (\$300) per Unit in any twelve (12) month period.

(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any requirement made by the Board of Directors pursuant to subparagraph (e)(i) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability) may perform such required act or work at the Unit at a mutually agreed upon time. The cost of any such work performed by the Association shall be billed to the Owner and shall bear interest at the highest rate permitted by law from the date expended until full payment. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to



subparagraph (e)(i) of this Paragraph, including, but not limited to, a right of entry without notice in an emergency situation.

(f) Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. The Association and each Unit Owner agree to: (i) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Owners, and each Owner agrees to notify the Association within twenty-four (24) hours of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Condominium that they respectively maintain.

Notwithstanding anything to the contrary herein. Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this subparagraph (f), and shall not be held liable for any loss or damage caused by the failure of the Association or a Unit Owner to perform their obligations herein.

(g) Inspections. In addition to the general maintenance obligations of the Association as set forth in the Declaration, the Association shall, at all times, contract or otherwise retain the services of independent, qualified, licensed individuals or entities (the "Inspectors") to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Condominium.

The Inspectors shall inspect component parts of the Building, including but not limited to those items described on Exhibit "E," attached hereto and incorporated herein. The items listed on Exhibit "E" are not intended to provide an exhaustive list of all items that should be inspected and the Inspectors may inspect such other items as the Association deems appropriate in accordance with prudent business practices and the recommendations of the Inspectors.

The inspections shall take place at least as frequently as specified on Exhibit "E" or more frequently if recommended by the Inspectors. The Inspectors shall provide written reports of their inspections to the Board promptly following completion thereof. The written reports shall identify any items of maintenance or repair, which either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the members of the Association at the next meeting of the members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in

accordance with prudent business practices and the recommendations of the Inspectors. A recommended preventive maintenance plan is included as part of Exhibit "E".

For a period of ten (10) years after the conveyance of the last Unit in the Condominium by Declarant to an Owner, the Association shall maintain records of such inspections and of corrective or remedial work done to address concerns raised by the Inspectors, and if requested by Declarant, deliver to Declarant ten (10) days advance written notice of all such inspections (and an opportunity to be present during such inspection, personally or through an agent) and shall provide Declarant (or its designee) with a copy of all written reports prepared by the inspectors.

The provisions of this subparagraph (g) shall not apply during the period Declarant appoints any members of the Board in accordance with the Bylaws for the Association and the Act.

(h) Limitation of Liability of Association and Declarant. Notwithstanding the duty of the Association to maintain and repair parts of the Building or Units, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Building or Units to be maintained and repaired by the Association, or caused by the elements, other Unit Owners or third parties. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION, OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE BUILDING AND UNITS, INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(i) IT IS THE EXPRESS INTENT OF THE CONDOMINIUM INSTRUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM AND THE VALUE THEREOF.

(ii) THE ASSOCIATION OR DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY OF THE CONDOMINIUM; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT

NEITHER THE ASSOCIATION NOR DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY ON THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-UNIT OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE CONDOMINIUM AND COMMIT CRIMINAL ACTS ON THE CONDOMINIUM NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE CONDOMINIUM WILL NOT BE COMMITTED BY OTHER UNIT OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH UNIT OWNER. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

(iii) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF TEXAS, GALVESTON COUNTY, THE CITY OF GALVESTON AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES.

(iv) ANY PROVISIONS OF THE CONDOMINIUM INSTRUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE COMMON ELEMENTS (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

(i) AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF DECLARANT AND ITS AFFILIATES, AS WELL AS TO THE ASSOCIATION'S EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES) AND SUBCONTRACTORS, WHICH SHALL BE FULLY PROTECTED HEREBY.

**Section 5.2 Additions, Alterations or Improvements by Owner.** Subject to the provisions in this Declaration, no Owner (other than Declarant) shall: (i) make any addition,

alteration or improvement in such Owner's Unit, to the extent either visible from any other Unit or the exterior of the Building, whether structural or non-structural; (ii) change the floor plan and layout of its Owner's Unit; or (iii) make any material changes to the configuration or size of any Unit, Storage Space or Limited Common Element without the prior written approval of the Association, in its sole and absolute discretion. However, in no event shall any such alteration, improvement, change or combination interfere with any structural support of any Unit or any System serving another Unit. All work done in accordance with this Section 5.2 shall be done in compliance with all Legal Requirements and the Governing Documents. **THE OWNER, MAKING OR CAUSING TO BE MADE ANY PERMITTED ADDITIONS, ALTERATIONS OR IMPROVEMENTS, AGREES, AND SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO HOLD THE BOARD OF DIRECTORS, ASSOCIATION, OTHER OWNERS, MANAGERS, DECLARANT, AND EACH OF THEIR RESPECTIVE SUCCESSORS, ASSIGNS OR DESIGNEES HARMLESS FROM AND TO INDEMNIFY AND DEFEND THEM FROM ANY LIABILITY OR DAMAGE TO THE BUILDINGS. ANY OTHER OWNER SUBMITTING PLANS HEREUNDER, BY DISSEMINATION OF THE SAME, AND ANY OWNER, BY ACQUIRING TITLE TO THE SAME, AGREES NOT TO SEEK DAMAGES FROM THE BOARD OF DIRECTORS, ASSOCIATION, OTHER OWNERS, MANAGERS, DECLARANT, AND EACH OF THEIR RESPECTIVE SUCCESSORS, ASSIGNEES OR DESIGNEES, ARISING OUT OF THEIR REVIEW OF ANY PLANS HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BOARD OF DIRECTORS, ASSOCIATION, OWNERS, MANAGERS, AND EACH OF THEIR RESPECTIVE SUCCESSORS, ASSIGNS OR DESIGNEES, SHALL NOT BE RESPONSIBLE FOR REVIEWING, NOR SHALL THEIR REVIEW OF ANY PLANS BE DEEMED APPROVAL OF, ANY PLANS FROM THE STANDPOINT OF THE STRUCTURAL SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODES OR INDUSTRY STANDARDS OR COMPLIANCE WITH LEGAL REQUIREMENTS. FURTHER, EACH OTHER OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD THE BOARD OF DIRECTORS, ASSOCIATION, OWNERS, MANAGERS, DECLARANT, AND EACH OF THEIR RESPECTIVE SUCCESSORS, ASSIGNS OR DESIGNEES, AND THEIR RESPECTIVE OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, DAMAGES, EXPENSES OR LIABILITIES WHATSOEVER, ARISING FROM THEIR REVIEW OF ANY PLANS HEREUNDER.**

**Section 5.3 Mechanic's Liens; Indemnification.** No labor or services performed or materials furnished and incorporated in a Unit, shall be the basis for the filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same or against the Common Elements. **EACH OWNER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE BOARD OF DIRECTORS, ASSOCIATION, OWNERS, OTHER OWNERS, TENANTS, MANAGERS, DECLARANT, AND EACH OF THEIR RESPECTIVE SUCCESSORS, ASSIGNS OR DESIGNEES, FROM AND AGAINST ALL LIABILITIES AND OBLIGATIONS ARISING FROM THE CLAIM OF ANY MECHANIC'S LIEN AGAINST THE UNIT OR RESIDENCE OF SUCH OTHER OWNERS OR COMMON ELEMENTS.** All contracts for labor, services and/or materials with respect to any of the Units shall be in compliance with the provisions hereof.

#### **Section 5.4 Taxes.**

(a) Payment of Governmental Impositions. Each Owner shall be responsible for and shall pay when due all Governmental Impositions lawfully levied or assessed against its Unit, except to the extent such tax assessments are being actively and diligently contested in good faith by appropriate legal proceedings. Any Governmental Impositions lawfully levied or assessed with respect to the Property not separately billed to the Owners shall constitute a Common Expense and be payable by the Association when due.

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

(c) Units Not Separately Assessed. If any Governmental Impositions with respect to the Property are not separately billed to the Owners, each Owner shall pay its respective allocated portion of taxes which such allocations shall be determined in the manner set forth in this Declaration when requested by the Association (but in no event prior to twenty (20) days or later than ten (10) days before the date of delinquency, without any additional notice or grace period) to permit the Association to make full payment of taxes prior to the date on which such taxes would become delinquent; provided that the Association shall not require any Owner to make any payment to the Association for taxes to the extent such amounts have already been deposited by such Owner in accordance with any escrow arrangement.

(d) Failure to Pay Governmental Impositions. The Association or any Mortgagee may pay the portion of taxes that any Owner has failed to pay when due, and the Association or such Mortgagee shall have a lien against such Unit that may be enforced by any means available at law or in equity, including non-judicial foreclosure sale of such Unit in accordance with Texas Property Code Section 51.002 (as now written or hereafter amended); provided, however, no such lien for delinquent taxes shall be valid until a notice of such lien is duly recorded in the real property records of the County, notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the real property records. Each Owner, by its acquisition of such Unit, grants a power of sale in connection with such lien in favor of the Association or any Mortgagee that makes payment of taxes on behalf of a defaulting Owner. Any lien pursuant to this Section 5.4(d) shall have the same priority as a lien by the Association for Assessments; provided that any such lien for delinquent taxes shall be subordinate to the lien of any Lien Indebtedness encumbering the defaulting Owner's Unit, which Lien Indebtedness was recorded prior to the date such lien for taxes was duly recorded (notwithstanding any applicable statute, law (including case law), equitable doctrine ordinance or regulation that permits any such lien to attach absent such recordation in the real property records). This Section 5.4 shall terminate and be of no further force or effect whatsoever, upon the later of the date upon which (i) each Unit within the Condominium shall be separately assessed and billed as a separate tax parcel by the tax assessor and (ii) all the taxes due and owing prior to all Units being separately assessed and billed as a separate tax parcel by the tax assessor have been paid in full to the appropriate taxing authority.

**Section 5.5 Utilities.** Each Owner shall be responsible for and shall pay all electricity and water charges relating to such services used or consumed at or with respect to the occupancy of its Unit, to the extent such charges are separately metered by the respective utility companies. Any utility charges not so separately metered and charges relating to such services used in connection with the use and maintenance of the Common Elements, shall constitute a Common Expense and be payable by the Association.

## ARTICLE VI

### Insurance

**Section 6.1 Insurance.** All insurance coverage required to be obtained pursuant to this Article VI, or purchased at the election of an Owner or the Association shall:

- (a) be in such form and shall be issued by such responsible insurance companies licensed to do business in the State of Texas and shall be rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A/VII" or better;
- (b) contain standard mortgagee clauses, if applicable;
- (c) not be brought into contribution with insurance purchased by other Owners or the Association;
- (d) provide that insurance trust agreements shall be recognized;
- (e) waive any right to claim invalidity arising from the acts of the insured; and
- (f) state that such policy is primary insurance if at the time of a loss under the policy any Owner has other insurance covering the same property covered by the policy.

### **Section 6.2 Insurance by Association.**

- (a) The Association shall obtain, as a Common Expense, insurance coverage required of an Owner pursuant to the Act and insurance coverage in at least the amounts of the coverage set forth on Exhibit "D" attached to this Declaration.
- (b) The Association shall carry such other or additional insurance in such amounts and against such risks as the Association shall reasonably deem necessary or appropriate with respect to the operation of the Association, including liability insurance for all officers, directors, trustees and employees of the Association. The premiums for all insurance coverages maintained by the Association pursuant to this Section 6.2 shall constitute a Common Expense and be payable by the Association.

**Section 6.3 Insurance by Owners.** Each Owner will be responsible for obtaining and maintaining at such Owner's sole cost and expense, in compliance with the requirements of Exhibit "D" to the extent applicable: (i) insurance covering all alterations, additions, betterments and improvements to its Unit, the Limited Common Elements appurtenant to its Unit and its Storage Space, and all other personal property located in the foregoing or constituting a part

thereof; and (ii) insurance covering damage to Common Elements or other Units, the cause of which originates from such Owner's Unit. Nothing in this Declaration shall be deemed or construed as prohibiting an Owner, at its sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Owner may deem necessary or appropriate.

**Section 6.4 Other.**

(a) Unavailability of Coverage. The Association shall not be liable for failure to obtain any insurance coverage required by this Declaration to be obtained by the Association or for any loss or damage resulting from such failure, if such failure is due to the general unavailability of such coverage from reputable insurance companies, or if such coverage is not available at a commercially reasonable cost.

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

(c) Coverage Limitations. All insurance coverages purchased by the Association and the Owners pursuant to Article VI of this Declaration shall not cover claims against any other Owner due to accidents occurring within that other Owner's Unit or, casualty, theft or loss to the contents of that other Owner's Unit.

(d) Waiver of Claims. Each Owner waives and releases any claim it might have against the Board of Directors, Association, other Owners, Tenants, Resident Tenants (other than such Owner's Tenant), Managers, Declarant, and each of their respective successors, assigns or Designees, for (i) any damage to or theft, destruction, loss or loss of use of any property or (ii) any personal or bodily injury, to the extent the same is insured against under any insurance policy of the types described in the Governing Documents that cover the Property, such Owner's or the Association's fixtures, personal property, improvements, or business, or is required to be insured against under the terms of any Governing Document, regardless of whether the negligence of the Board of Directors, Association, other Owners, Tenants, Managers, Declarant, or each of their respective successors, assigns or designees (as applicable) caused such (x) damage, theft, destruction, loss, or loss of use of, any property or (y) personal or bodily injury. Each Owner shall cause its respective insurance carrier to endorse all applicable policies waiving each such carrier's rights of recovery under subrogation or otherwise against such Persons. Notwithstanding anything to the contrary in this Declaration, this waiver of subrogation shall have no effect upon the Association's authority to impose applicable fines should any Owner, Tenants, or any other party violate any provision of the Governing Documents.

**Section 6.5 Insurance Trustee.** Each Owner, by acceptance of title to, or possession of, a Unit shall be deemed to have irrevocably appointed the Association as the Insurance Trustee. Notwithstanding anything in Article VI or Article XIII of this Declaration to the

contrary, if physical damage to the Condominium occurs, the Insurance Proceeds of the policy maintained by the Association pursuant to Section 6.2 of this Declaration shall be paid to the Association, acting as the Insurance Trustee for the Condominium, and the Insurance Trustee shall perform all of the duties and obligations otherwise imposed on the Board of Directors (except any decision not to repair or reconstruct the improvements). The fees of the Insurance Trustee shall be a Common Expense. All Insurance Proceeds attributable to insurance policies required to be maintained by the Association shall be paid to the Association as Insurance Trustee.

## ARTICLE VII

### Assessments

**Section 7.1 Monthly and Special Assessments by Association.** The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment and Special Assessments as set forth below.

(a) Common Expenses. The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment sufficient in the judgment of the Association to pay all Common Expenses when due. Such Monthly Assessments so established shall be payable by the Owners on the first day of each calendar month, and shall be applied to the payment of Common Expenses and other Charges for which the Association is responsible.

(b) Budget for Common Expenses. Prior to the commencement of each fiscal year of the Association, the Association shall deliver to the Owners a Budget, incorporating the share of the Common Expenses owed by each Owner under this Declaration, in sufficient detail so as to inform each Owner of the nature and extent of the Common Expenses anticipated to be incurred and shall be accompanied by a statement setting forth each Owner's monthly share thereof, which shall be determined in accordance with such Owner's Allocated Interests, and the date as of which such Monthly Assessment commences to be payable. The Budget shall include the Monthly Assessment payable by the Owner of the Retail Unit which shall be based upon the operational expenses of the Association, other than those operational expenses related to the maintenance, repair, replacement and operation of those Common Elements as to which the Owner of the Retail Unit has no usage rights. By way of example, the Owner of the Retail Unit shall not be obligated to pay Monthly Assessments with respect to the expenses of the Association allocable to the lobby, elevators, swimming pool, exercise room, parking spaces and any Limited Common Elements. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Monthly Assessment payable hereunder and the failure of the Association to timely deliver the Budget provided for in this Declaration shall in no event excuse or relieve an Owner from the payment of the Monthly Assessments contemplated hereby. Any Budget prepared and delivered to the Owners as contemplated in this Article VII may be amended as and to the extent reasonably necessary, and the amount of an Owner's Monthly Assessment changed to correspond therewith. If the proposed Budget for a fiscal year increases more than twenty percent (20%) above the Budget for the preceding fiscal year, such Budget must be approved by the affirmative vote of the Owners holding not less than sixty-seven percent (67%) of the Allocated Interests.



(c) Special Assessments. In addition to the Monthly Assessments contemplated by Section 7.1(a) of this Declaration, the Association shall possess the right, power and authority to establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Association to pay (i) the operation and management of the Condominium, the administration of the Association and the maintenance of and replacement of Common Elements and (ii) Owner's share of Special Assessments established by the Association from time to time for the proper maintenance, care, alteration, improvement, replacement, operation and management of the Common Elements of the Condominium, and the administration of the Association. Except as contemplated by Article VIII of this Declaration, no consent or approval of the Owners shall be required for the establishment of a Special Assessment as contemplated by this Section 7.1(c), except for any Special Assessment relating to the alteration or improvement of any Common Element of the Property or an expenditure in excess of \$50,000.00 per item or \$100,000.00 in the aggregate in any year, which in each case must be approved by at least sixty-seven percent (67%) of all of the Owners.

The Owner of the Retail Unit shall not be obligated to pay any Special Assessments allocable to the expenses of the Association related to the maintenance, repair, replacement, management and operation of those Common Elements as to which the Owner of the Retail Unit has no usage rights.

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

**Section 7.3 Obligation to Pay Assessments.** Each Owner shall be personally obligated to pay such Owner's share of all Assessments duly established pursuant to this Article VII to the Association. Unpaid Assessments due as of the date of the conveyance or transfer of a Unit shall not constitute a personal obligation of the new Owner (other than such new Owner's pro rata share of any reallocation thereof); however, the former Owner shall continue to be personally liable for such unpaid Assessment. No Owner shall be entitled to exemption from liability for Owner's obligation to pay such Assessments by waiver of the use and enjoyment of the Common Elements, by an abandonment of its Unit or by any other action whatsoever. Any Assessment not paid within five (5) days of the date due shall bear interest at the Past Due Rate, and shall be recoverable by the Association, together with interest as aforesaid and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the County. It shall be the responsibility of the Association to collect any such delinquent Assessment, the existence of which shall be made known by written notice delivered to the defaulting Owner and, where requested, the Owner's Mortgagee.

**Section 7.4 Lien to Secure Payment of Assessments.** Declarant hereby reserves and assigns to the Association a lien, pursuant to the provisions of the Act, against each Unit, the Rents, if any, payable to the Owner and Insurance Proceeds any Owner may be entitled to receive, to secure the payment of all Assessments, which lien shall be and constitute a lien and encumbrance, in favor of the Association, upon such Units, the Rents, and any Insurance Proceeds. The liens established in this Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon such Units, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of Lien Indebtedness (provided such lien was recorded prior to the date on which the Assessment became delinquent) and the liens for unpaid Governmental Impositions. The liens and encumbrances created in this Declaration may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Unit of a defaulting Owner; such sale to be conducted in the manner set forth in Texas Property Code Section 51.002 (as now written or as hereafter amended). Each Owner, by acquisition of its Unit, grants to the Association a power of sale in connection with the Association's liens. NOTWITHSTANDING ANY PROVISIONS OF THIS SECTION 7.4 OF THE DECLARATION TO THE CONTRARY, THE ASSOCIATION SHALL NOT HAVE THE AUTHORITY TO FORECLOSE ON THE DEFAULTING OWNER'S UNIT FOR NON-PAYMENT OF ASSESSMENTS IF THE ASSESSMENTS CONSIST SOLELY OF FINES. By written resolution, the Association may appoint, from time to time, an officer, agent, trustee or attorney of the Association to exercise the power of sale on behalf of the Association. The Association may bid for and purchase the Owner's Unit, as a Common Expense, at any such foreclosure sale. The foreclosure by a Mortgagee of an Owner's Unit in order to satisfy Lien Indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale.

**Section 7.5 Commencement of Obligation to Pay Assessments.** Each Owner, other than Declarant, shall be obligated to commence payment of all Assessments against its Unit on the date such Owner's Unit is conveyed to the Owner. If such date is other than the first day of a month, then such Owner shall be obligated to pay only a pro rata share of the Assessment against such Owner's Unit based on the number of days during such month that the Owner will hold title to the Owner's Unit. If a Tenant occupies a Unit and that Owner becomes delinquent in the payment of any Assessment against such Unit, the Association shall have the right, upon written notice to the Tenant and Owner, to collect any rental payments due from the Tenant until the full amount of the Assessment plus any applicable late fees or fines is collected. Prior to the commencement of the initial Monthly Assessment, Declarant shall pay all Common Expenses of the Condominium (excluding portions thereof allocable to reserves); provided, however, nothing contained in this Declaration shall prevent Declarant from collecting from the purchaser of a Unit at closing any expenses, such as taxes or insurance, to the extent that Declarant prepaid on behalf of the Unit being purchased. After commencement of the initial Monthly Assessment and prior to the end of the period of Declarant Control, Declarant shall pay the amount by which the Common Expenses of the Condominium (excluding the portion thereof allocable to reserves) exceed Monthly Assessments required to be paid by Owners other than Declarant; thereafter, Declarant shall pay Monthly Assessments the same as any other Owner. If such date is other than the first day of a month, then Declarant shall be obligated to pay only a pro rata share of the Assessments against such Unit based on the number of days remaining during such month.

**Section 7.6 Redemption by Owner.** The Owner of a Unit purchased by the Association at a foreclosure sale of the Association's lien for Assessments may redeem the Unit not later than the 90th day after the date of the foreclosure sale. To redeem the Unit, the Owner must pay to the Association, as applicable, all amounts due at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the Past Due Rate, reasonable attorneys' fees and costs incurred by the Association in foreclosing the lien, any Assessment levied against the Unit by the Association after the foreclosure sale, and any reasonable costs incurred by the Association, as Owner of the Unit, including costs of maintenance and leasing. Upon redemption, the Association shall execute a deed to the redeeming Owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming Owner records prior to such date the deed from the Association or an affidavit stating that the Owner has exercised the right of redemption. A Unit that has been redeemed remains subject to all liens and encumbrances on the Unit before foreclosure. All Rents collected from the Unit by the Association from the date of foreclosure sale to the date of redemption belong to the Association, but the Rents shall be credited against the redemption amount. If the Association purchases a Unit at a sale foreclosing its lien, the Association may not transfer ownership of the Unit during the redemption period to a person other than the redeeming Owner.

**Section 7.7 Notice of Default.** If the Owner defaults in its monetary obligations to the Association, the Association shall notify any Mortgagee in accordance with the provisions of Article XIII of this Declaration and may notify other lienholders of the default and the Association's intent to foreclose its lien. The Association may also record a no file of the Delinquent Assessments in the Official Public Records of Real Property of Galveston County, Texas

**Section 7.8 Alternative Actions.** Nothing contained in this Declaration shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

## ARTICLE VIII

### Loss and Obsolescence

**Section 8.1 Loss or Damage.** The following provisions shall govern if the Common Elements, the Improvements, or any part thereof, are damaged or destroyed by fire or other casualty:

(a) Notice to Mortgagees. Prompt written notice of any such substantial damage or destruction shall be given to the Association, all Mortgagees and Owners.

(b) Restoration and Repair. The Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement; or (iii) eighty percent (80%) of the Owners, including each Owner of a Unit that will not be rebuilt or repaired, vote not to rebuild.

(c) Special Assessment. The amount by which such restoration and repair costs exceed collectible Insurance Proceeds shall be and constitute a Special Assessment payable by the Owners within sixty (60) days of the date notice of such Special Assessment is delivered by the Association, in accordance with Section 7.1(c) of this Declaration.

(d) Insurance Proceeds. Any excess Insurance Proceeds remaining after such restoration and repair, or any Insurance Proceeds or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Insurance Trustee in separate accounts for each Owner according to the Allocated Interests of the Owners, and be applied, without contribution from one such account to another, as follows: (i) first, to the payment of any Governmental Impositions; (ii) second, to the payment of the balance of Lien Indebtedness of such Owner; (iii) third, to the payment of any delinquent Assessment with respect to such Owner's Unit; and (iv) the balance, if any, to each Owner or such other parties as shall be entitled thereto.

**Section 8.2 Damaged Units**. The following provisions shall govern if any Unit or any part thereof is damaged or destroyed by fire or other casualty ("Damaged Unit"):

(a) Notice to Mortgagees. Prompt written notice of any such substantial damage or destruction shall be given to the Owner of the Damaged Unit to the Association and the Mortgagees of the Damaged Unit.

(b) Restoration and Repair. The Owner of the Damaged Unit shall promptly proceed with the full restoration and repair of such damage or destruction and pay all costs of such restoration, repair and replacement or rebuilding in excess of the net proceeds of the collectible Insurance Proceeds unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement; or (iii) one hundred percent (100%) of Owners, including the Owner of the Damaged Unit, vote not to rebuild.

**Section 8.3 Matters Relating to Restoration and Repairs**. Any restoration and repair work undertaken by the Association or an Owner pursuant to this Article VIII shall be performed in a good and workmanlike manner with a view to restoring the Improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Association be responsible for restoring, repairing or replacing any improvements to a Unit made by an Owner or the contents located in such Owner's Unit. All such restoration and repair work, whether done by the Association or an Owner, shall be effected in a manner so as to observe all vertical and horizontal Unit boundaries existing prior to such damage or destruction. If an Owner decides to rebuild or repair any Unit in excess of its full replacement cost, such Owner shall be responsible for any such costs exceeding the full replacement value of such Unit; provided, however, that if the Association shall elect to incur such expenses, such additional expenses, to the extent they exceed the replacement value of such Unit, shall constitute a Special Assessment.

**Section 8.4 Obsolescence of the Common Elements**. If the Board of Directors shall vote, at a meeting of the Board of Directors duly called for purposes of considering same, that the Common Elements, or any part thereof, (including any Systems which serve only, or are a part of, individual Units), are obsolete, the Association shall promptly proceed with the

necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a Special Assessment payable by all Owners, in accordance with their respective Allocated Interests, within thirty (30) days of the date notice of such Special Assessment is delivered to them by the Association.

**Section 8.5 Obsolescence of the Property.** If the Owners holding not less than one hundred percent (100%) of the Allocated Interests shall determine, at a meeting of the Association duly called for purposes of considering same, that the Property is obsolete, the Association, after first obtaining the written consent of all Mortgagees holding at least 100% of the Allocated Interests of the Owners, shall promptly proceed with the sale thereof in its entirety. Any proceeds from such sale shall be received, held and applied for and on account of the Owners as provided in Section 8.1 of this Declaration.

**Section 8.6 Association as Attorney-in-Fact.** Each Owner, by acceptance or possession of title to a Unit, hereby irrevocably makes, constitutes and appoints the Association, and each and every one of its successors in interest hereunder (which appointment shall be deemed a power coupled with an interest), as such Owner's true and lawful attorney-in-fact, for and in Owner's name, place and stead, upon the damage or destruction of the Condominium, or any part thereof, or upon any determination by the Owners made pursuant to this Article VIII, to take any and all actions, and to execute and deliver any and all instruments, as the Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article VIII, hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized, in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article VIII as aforesaid, including the power and authority to make and settle claims under any insurance policies maintained by the Association, except as may be limited by this Declaration, and to execute and deliver all instruments necessary or incidental to any such actions.

## ARTICLE IX

### Condemnation

**Section 9.1 General Provisions.** If all or any part of the Property, excluding the Common Elements, is the subject to a Taking, the Association and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give such notice as it receives of such proceeding to all Owners and to all Mortgagees which have requested such notice, provided, however, that the failure of the Association to give such notice shall not prejudice the right of any Mortgagee to participate in such proceedings. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. If permitted by the Act, all damages or awards for any such Taking shall be deposited with the Insurance Trustee, and in any case, such damages or awards shall be applied

or paid as hereinafter provided. Any restoration or repair of the Property following a partial Taking shall be performed in accordance with the provisions of this Declaration and shall follow, as nearly as possible, the original plans and specifications for the Property, unless otherwise approved by all Mortgagees.

**Section 9.2 Taking of One Unit.** If an Owner's Unit (or a substantial part thereof such that ownership, operation, or occupancy of the remaining portion of the Unit in accordance with the originally intended use of the Unit is impossible) is the subject of a Taking, and the Owner of such Unit shall vacate and abandon such Unit by virtue of such Taking, the Owner and its Mortgagee shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and, after payment thereof, such Owner and its Mortgagee shall be divested of all interest in the Property. The condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the Taking. If any portion of a Unit is subject to a Taking, such that ownership, operation, or occupancy of the remaining portion of the Unit may be continued in accordance with the originally intended use of the Unit, the Owner may not vacate the remaining portion of the Unit. In such case, the Owner shall be entitled to the award for such Taking, and the Allocated Interest of the condemned Unit shall be reduced in proportion in accordance with the Reallocation Percentage. The portion of the Allocated Interest divested from the partially-acquired Unit shall be automatically reallocated to that Unit and the other Units in proportion to the respective Allocated Interests of the Units before the Taking, with the partially-acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest. If any repair or rebuilding of the remaining portions of the Property is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners owning a majority of the re-allocated Allocated Interests either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such Taking. This Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

**Section 9.3 Taking of the Common Elements.** If a portion of the Common Elements together with or apart from any Unit is the subject of a taking, the Association, in addition to the general powers set out in this Declaration, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Common Elements in which case the agreement of all Owners shall be required. With respect to any such Taking of the Common Elements only, all damages and awards shall be determined for such Taking as a whole and not for any Owner's interest therein. After the damages or awards for such Taking are determined, such damages or awards shall be held by the Association, acting as trustee for each Owner and its Mortgagee, as their interests shall appear, in proportion to such Owner's percentage interest in the Common Elements, except that the portion of any such award attributable to the condemnation of a Limited Common Element shall be allocated among the Owners of the Units served by such Limited Common Elements, as such Owner's interests existed in the Limited Common Elements condemned. The Association may, if it deems advisable, call a meeting of the Owners, at which

meeting the Owners, by the vote of all Owners, shall decide whether to replace or restore as far as possible the Common Elements taken or damaged. If it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Map attached hereto shall be duly amended by instrument executed by the Association on behalf of the Owners and duly recorded.

**Section 9.4 Taking of Multiple Units.** If an eminent domain proceeding results in the Taking of all or part of multiple Units comprising less than two-thirds of the total square footage of the Property, then the damage and awards for such Taking shall be determined for each Unit and the following shall apply:

(a) The Association shall determine which of the Units damaged by such Taking may be operational or habitable for the purposes set forth in this Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged.

(b) The Association shall determine whether it is reasonably practicable to operate the remaining Units or portions of the Units as a mixed use condominium project in the manner provided in this Declaration.

(c) If the Association determines, with the consent of fifty-one percent (51%) of the Mortgagees, that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be made operational or habitable as a mixed-use condominium project, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in the undivided interest by all Owners, as tenants-in-common, in the percentage of the Allocated Interest of each Owner.

(d) If the Association determines that it will be reasonably practicable to operate the undamaged Units and the damaged Units which can be made operational or habitable as a mixed-use condominium project, then the damages and awards made with respect to each Unit which has been determined to be capable of being made operational or habitable shall be applied to repair and reconstruct such Unit so that it is made operational or habitable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rata against the Owners of those Units which are being repaired or reconstructed so as to be made operational or habitable. With respect to those Units which may not be made operational or habitable, the award made with respect to each such Unit shall be paid to such Owner or the Owner's Mortgagee or mortgagees, as their interests may appear, and the remaining portion of such Units, if any, shall become a part of the Common Elements and repair and use of such Units shall be determined by the Association. Upon the payment of such award for the account of such Owner as provided in this Declaration, such Unit shall no longer be a part of the Property, and the Allocated Interest appurtenant to each remaining Unit which shall continue as part of the Property shall be equitably adjusted to distribute the Allocated Interest of the terminated Units among the reduced number of Owners.

**Section 9.5 Complete Taking of Entire Property.** If all the Property is subject to a Taking or damaged by such Taking, all damages and awards shall be held for the accounts of all Owners, and their Mortgagees, as their interests shall appear, as provided in this Declaration, in

proportion to their Allocated Interests, and this Condominium shall terminate upon such payment.

**Section 9.6 Payment of Awards and Damages.** Any damages or awards provided in this Article IX to be paid to or for the account of any Owner by the Association, acting as trustee, shall be applied (i) first, to the payment of any Governmental Impositions past due and unpaid with respect to that Unit; (ii) second, to Lien Indebtedness on that Unit; (iii) third, to the payment of any Assessments charged to or made against the Unit and unpaid; and (iv) finally to the Owner.

**Section 9.7 Association as Attorney-in-Fact.** Each Owner, by acceptance of title to, or possession of, a Unit, hereby irrevocably makes, constitutes and appoints the Association, and each and every one of its successors in interest hereunder (which appointment shall be deemed a power coupled with an interest), as Owner's true and lawful attorney-in-fact, for and in Owner's name, place and stead, upon the condemnation of the Condominium or any part thereof, or upon any determination by the Owners made pursuant to this Article IX, to take any and all actions, and to execute and deliver any and all instruments, as the Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article IX, hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized, in the name and on behalf of all Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article IX as aforesaid, including the power and authority to make and settle claims under any insurance policies maintained by the Association, except as may be limited by the Declaration, and to execute and deliver all instruments necessary or incidental to any such actions.

## ARTICLE X

### Development Period

**Section 10.1 Initial Directors.** The Board of Directors shall be initially established by Declarant as set forth in the Bylaws.

### **Section 10.2 Period of Declarant Control.**

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

(b) Not later than one hundred twenty (120) days after Declarant has conveyed to Owners other than Declarant title to fifty percent (50%) of the Units, an election shall be held by the Association, pursuant to the Bylaws, for the election of not less than one-third of the members of the Board of Directors by Owners other than Declarant.



(c) At least thirty (30) days prior to the termination of the period of Declarant Control, the Association shall elect at least three (3) directors to the Board of Directors pursuant to the Bylaws, of which one will be elected for a three year term, one will be elected for a two year term and one will be elected for a one year term, such terms to commence as of the date on which the period of Declarant Control terminates.

**Section 10.3 Working Capital Contributions.**

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

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

**ARTICLE XI**

**Matters for Mediation and Arbitration**

**Section 11.1 Mediation.** All Disputes except those relating to equitable remedies, which shall not be resolved within fifteen (15) days after same have arisen (unless such greater time is provided elsewhere in the Governing Documents) shall be submitted for, or determined by non-binding mediation. Mediation of any Dispute shall be initiated by any Owner making a written demand therefor to the other Owner or Owners involved in such Dispute and the Association. With respect to such mediation, the parties shall, within ten days after delivery of such written notice to the Association, appoint a mediator who is: (i) a reputable person actively engaged in the commercial real estate industry for a continuous period of not less than ten years and (ii) is in no way affiliated, or has had material business dealings with any Owner or any member of the Association. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the then presiding judge of the United States District Court of the Galveston Division of the Southern District of Texas or such other service as may be recommended by the Galveston Bar Association. Such mediation shall occur within thirty (30) days after the mediator has been appointed and shall occur at a mutually acceptable location in Galveston, Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorney's fees); provided, however, that if the Dispute is not resolved pursuant to such mediation, the provisions of Section 11.2 of this Declaration shall govern the payment of attorney's fees and costs and expenses of mediation or arbitration, as applicable under this Article XI.

**Section 11.2 Final Offer Arbitration.** If the parties are unable to resolve any Dispute at mediation, no later than thirty (30) calendar days after the parties have reached an impasse at mediation, the parties shall submit their Dispute to binding arbitration. The parties agree to select a single arbitrator from a list taken from the American Arbitration Association of

commercial arbitrators, and if they cannot agree on an arbitrator, each party shall select a person and those two so selected shall then select the single arbitrator who shall thereafter serve as arbitrator. The issues in dispute shall be submitted as "baseball" or final-offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current Rules for Commercial Mediation and Arbitration promulgated by the American Arbitration Association shall apply. Any award that is rendered by the arbitrator shall be accomplished no later than ten (10) days from the initiation of the arbitration procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys' fees, costs and expenses (incurred in connection with the mediation or arbitration, as applicable, of a Dispute under this Article XI) of the party whose position is selected or awarded for the mediation or arbitration, as applicable, of the Dispute under this Article XI.

**Section 11.3 Exclusive Remedy.** With respect to any Dispute subject to mediation or arbitration, as applicable, under this Article XI, it is agreed that the mediation and arbitration provisions of this Article XI shall be the sole remedy of the Owners and Association involved in such Dispute. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter that does not constitute a "Dispute" as such term is defined in this Declaration or not described in this Declaration or with any person not named or described in this Declaration, provided that any arbitration proceeding initiated under the terms of this Section 11.3 may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Dispute and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the Owners involved in the Dispute and such Owners' Mortgagees and nonappealable judgment thereon may be entered by any court having jurisdiction.

## ARTICLE XII

### Miscellaneous

**Section 12.1 Sound Transmission Disclaimer.** EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF THEIR UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A HIGH-RISE BUILDING SUCH AS THE CONDOMINIUM IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY UNITS, AND THE SURROUNDING DEVELOPMENT, AND/OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN UNITS DECLARANT, THE OWNERS, AND THEIR DESIGNEES DO NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE PROPERTY, AND EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW AS OF THE

DATE OF THIS DECLARATION, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND OR IMPACT NOISE TRANSMISSION.

**Section 12.2 Revocation or Termination of Declaration.** Except in the circumstance of automatic termination as provided in Section 9.5 of this Declaration, this Declaration may be revoked or the Condominium established hereby may be terminated, only by an instrument in writing, duly approved, executed and acknowledged by those Owners holding not less than eighty percent (80%) of the Allocated Interests and not less than one hundred percent (100%) vote of the Mortgagees. Any such instrument of revocation or termination shall be duly filed of record in the County. If the Property is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of the Act.

**Section 12.3 Amendment to Declaration.** This Declaration may be amended at a meeting of the Owners at which the amendment is approved by those Owners holding not less than sixty-seven percent (67%) of the votes or by a written amendment circulated among the Owners for execution. All amendments shall be evidenced by a written instrument executed and acknowledged by an officer of the Association on behalf of the consenting Owners and filed of record in the County. Any such amendment so effected shall be binding upon all of the Owners; provided, however, that except as permitted or required by the Act, no such amendment shall: (i) cause the alteration or destruction of all or part of any Unit unless such amendment has been consented to by the Owner and the Mortgagee of the Unit which is to be altered or destroyed; (ii) create or increase Special Declarant Rights; (iii) increase the number of Units; (iv) change the boundaries of a Unit; or (v) change the use restrictions on a Unit unless such amendment has been consented to by all of the Owners or is otherwise authorized by this Declaration. Additionally, notwithstanding anything contained in this Declaration to the contrary, including the foregoing provisions of this Section 12.3, to the extent permitted by the Act, the amendment of the definition of "Dispute" in Article I and/or the amendment of Section 2.6 of this Declaration shall require the written approval of Declarant, and no amendment pursuant to this Section 12.3 shall become effective unless approved by Declarant if Declarant still owns one or more Units and the amendment would, in Declarant's reasonable determination: (y) increase or otherwise modify Declarant's obligations; (x) reduce or modify any Special Declarant Rights or Special Declarant Rights set forth in the Declaration; or (z) materially inhibit or delay Declarant's ability to complete the Improvements or to convey any portion of the Property owned by Declarant. Notwithstanding the foregoing, Declarant, its Affiliate or the Association, if Declarant owns a Unit which has never been occupied, may, without a vote of the Owners or approval of the Association amend the Declaration or the Bylaws in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal National Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration.

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

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

1. The Declaration;
2. The Articles;
3. The Bylaws; and
4. The Regulations.

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

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

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

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

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

Declarant:  
EIBANDS LUXURY CONDOMINIUMS ASSOCIATION, INC.  
353 E. Parkwood  
Friendswood, Texas 77546  
Attn: Jerome Karam

Association:  
Gal Gate LLC  
353 E. Parkwood  
Friendswood, Texas 77546  
Attn: Jerome Karam

**Section 12.11 Estoppel Certificates.** Each Owner, from time to time but no more often than twice each calendar year, shall have the right to require the Association (as to all items listed below) to deliver to the requesting Owner a written statement addressed to the requesting Owner and its Mortgagee or purchaser of its Unit, as applicable, without payment of any fee or cost certifying: (a) the Declaration is unmodified and in full force and effect (or if modified that the Declaration as so modified is in full force and effect); (b) the Declaration attached to the certificate is a true and correct copy of this Declaration and all amendments hereto; (c) the date through which all Assessments have been paid by the Owner requested to provide the certificate and the Owner requesting such certificate; (d) to the knowledge of the Association, the requesting Owner is not in default of any of its obligations under the Declaration (or if the Association knows the requesting Owner to be in default, specifying the defaults and any remaining cure period, if any); (e) the Association holds no then existing liens, other than the lien for unpaid Assessments accrued and not yet payable, against the requesting Owner's Unit; and (f) such other matters as are reasonably requested by the requesting Owner.

### **Section 12.12 Security.**

NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS OR EMPLOYEES, NOR THE DECLARANT, NOR ITS MEMBERS OR MANAGERS, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS OR EMPLOYEES, DECLARANT OR ITS MEMBERS OR MANAGERS, SUCCESSOR DECLARANT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT OR TRACT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, AGENTS OR EMPLOYEES, DECLARANT OR ITS MEMBERS OR MANAGERS OR ANY SUCCESSOR DECLARANT DOES NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT OR TRACT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, AGENTS OR EMPLOYEES, DECLARANT OR ITS MEMBERS OR MANAGERS OR ANY OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY DWELLING AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLINGS AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, AGENTS OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

**Section 12.13 Covenants Running With the Land.** All provisions of this Declaration, the By-Laws, and the rules and Regulations, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representatives, successors, and assigns, but except as specifically provided for herein, the same are not intended

to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future owners, tenants, and occupants of Residence Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws, and the Rules and Regulations, as such document may be amended from time to time. The acceptance of a deed or conveyance or the entering into a lease or the entering into occupancy of any Residence Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, and the Rule and Regulations, as such documents may be amended from time to time, are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Resident Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

If any provisions of this Declaration or the By-Laws is invalid under, or would cause this Declaration and the By-Laws to be insufficient to submit the Land to the provisions of the Act, such provision shall be deed deleted from this Declaration or the By-Laws as the case may be, for the purpose of submitting the Land to the provisions of the Act, but shall nevertheless be valid and binding upon and insure to the benefit of the owners of the land and their heirs, executors, administrators, legal representatives, successors, an assigns and covenants running with the Land and with every part thereof and interest under other applicable law to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land.

If any provision that is necessary to cause this Declaration and the By-Laws to be sufficient to submit the Land to the provisions of the Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included as part of this Declaration or the By-Laws , as the case may be, for the purposes of submitting the land to the provisions of the Act.

Subject to the foregoing provisions, if this Declaration and the By-Laws are insufficient to submit the Land to the provisions of the Act, the provisions of this Declaration and the By-Laws shall nevertheless be valid and binding upon and insure to the benefit of the owners of the Land, and their heirs, executors, administrators, legal representatives, successors and assigns as covenants running with the Land and with every part thereof and interest therein under applicable law to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Others had signed and recorded an instrument agreeing to each such provision as covenant running with the Land.

**Section 12.14 Covenant of Further Assurances.** Any party subject to the terms of this Declaration, whether such party is an Owner, a lessee or sublessee of an Owner, a lessee of any Common Element, an occupant of a Residence Unit, or otherwise shall, at the expense of any such other party requesting the same, execute, acknowledge, and deliver to the Association such instruments, in addition to those specifically provided for herein, and take such other actions as such other party may reasonably request to effectuate the provisions of this Declaration or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction. If any Owner, or any other party subject to the terms of this Declaration fails or refuses, within ten (10) days after request therefore, to execute, acknowledge, or deliver any instrument, or to take any action that such Owner or party is

required to execute, acknowledge and deliver or to take pursuant to this Declaration, then the Association is hereby authorized as attorney-in-fact for such Owner or other party, coupled with an interest, to execute, acknowledge, and deliver such instrument, or to take such action, in the name of such Owner or other party, and such document or action shall be binding on such Owner or other party.

**Section 12.15 No Partition.** Except as may be otherwise specifically provided in this Declaration, the Common Elements shall remain undivided and shall not be subject to an action for partition or division of the co-ownership thereof so long as the Condominium is maintained as a condominium regime in accordance with the provisions hereof, and, in any event, any Lien Indebtedness secured by an interest in the Common Elements must be paid in full prior to bringing any action for partition or the consent of all holders of such Lien Indebtedness must be obtained.

**Section 12.16 Correction of Errors.** Declarant reserves, and shall have the continuing right until election of the fully elected board, without the consent of other Owners or the representatives of any Mortgagee, to amend this Declaration or the By-Laws for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any misstatement, errors or omission herein, provided that no such amendment shall change the stated numbers of Units nor the Allocated Interest in the Common Elements attributable thereto (except as set forth in Section 3.6).

## ARTICLE XIII

### **Provisions Applicable to Mortgagees**

**Section 13.1 Notice To Mortgagees.** All Mortgagees shall be entitled to receive the following notices in writing from the Association which notices shall be sent promptly following the occurrence of the applicable event: (a) notice of any proposed action which requires the consent of Mortgagees, which notice shall be given not less than thirty (30) days prior to the desired effective date of such action; (b) notice of default by an Owner (the beneficial interest in which is held by that Mortgagee) in the performance of such Owner's obligations or delinquency in the payment of Assessments, Charges or Governmental Impositions owed by Declarant, which remain uncured for a period of sixty (60) days; (c) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained hereunder by the Association or by any Owner; (d) notice of any damage or destruction to or condemnation of any portion of the Condominium that affects either a material portion of the Property or any Unit securing a Mortgagee's Lien Indebtedness, which notice shall be given promptly upon the Association's obtaining knowledge of such damage or destruction; (e) notice of any proposed payment to be made by any Person on behalf of an Owner which pursuant to the terms of this Declaration may result in a lien on such Owner's Unit; (f) notice sixty (60) days prior to the Association instituting any foreclosure action on any Unit owned by Declarant; (g) notice thirty (30) days prior to the effective date of (i) any proposed material amendment to this Declaration or the Map, but not otherwise; (ii) any termination of an agreement for professional management of the Association, that has been brought before the Association; and (iii) any proposed



termination of the Condominium; and (h) notice of all meetings of the members of the Association.

**Section 13.2 Cure Rights.** Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Declaration, and without payment of any penalty, to do any act or thing required of any party hereunder; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions hereof. All payments so made and all things so done and performed by any Mortgagee shall be effective to prevent a default under this Declaration as the same would have been if made, done and performed by an Owner instead of its Mortgagee. Any event of default under this Declaration which in the nature thereof cannot be remedied by a Mortgagee shall be deemed to be remedied if: (a) within thirty (30) days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto, the Mortgagee shall have acquired the property owned by the defaulting party (the "Acquired Property") or shall have commenced foreclosure or other appropriate proceedings in the nature thereof; (b) the Mortgagee diligently prosecutes any such proceedings to completion; (c) the Mortgagee shall have fully cured any default in the payment of any monetary obligations owed the non-defaulting party hereunder within such thirty (30) day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require possession of the Acquired Property; and (d) after gaining possession of the Acquired Property following a foreclosure or deed in lieu thereof, the Mortgagee performs all other obligations of the defaulting party hereunder as and when the same are due.

**Section 13.3 No Invalidity of Mortgage Lien.** No violation of this Declaration by, or enforcement of this Declaration against, any party shall impair, defeat or render invalid the lien of any Mortgagee.

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

**Section 13.5 Unpaid Assessments.** If any Mortgagee obtains title to any Unit on which such Mortgagee holds a mortgage encumbering such Unit, pursuant to judicial foreclosure or the powers provided in such mortgage, such Mortgagee shall take title to such Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued prior to the time the Mortgagee acquires title to such Unit.

**Section 13.6 Books and Records.** All Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Association, including current copies of the Governing Documents and financial statements, during normal business hours; (b) require the Association to submit an annual audited financial statement for the preceding fiscal year within one hundred twenty (120) days of the end of the Association's fiscal year, if one is available or have one prepared at the expense of such Mortgagee if such statement is not otherwise prepared by the Association; and (c) designate in writing a representative to attend all meetings of the members of the Association.

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

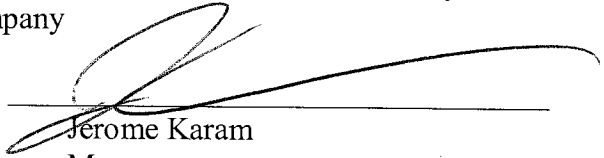
**Section 13.8 Required Percentage.** Any required percentage of Mortgagees in this Declaration shall mean and refer to the percentage the face amount of Lien Indebtedness held by such Mortgagees as compared to the total of the face amount of all Lien Indebtedness, and not the number of such Mortgagees.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on the day and year first above written.

DECLARANT:

Gal Gate, LLC, a Texas limited liability company

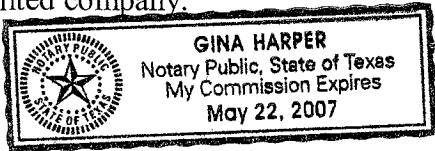
By:

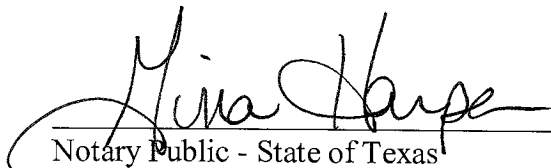


Jerome Karam  
Manager

THE STATE OF TEXAS       §  
                                          §  
COUNTY OF GALVESTON   §

This instrument was acknowledged before me on the 1st day of June, 2006, by Jerome Karam, Manager, of Gal Gate, LLC, a Texas limited liability company, on behalf of said limited company.



  
Notary Public - State of Texas

My Commission Expires:

5-22-07

List of Exhibits:

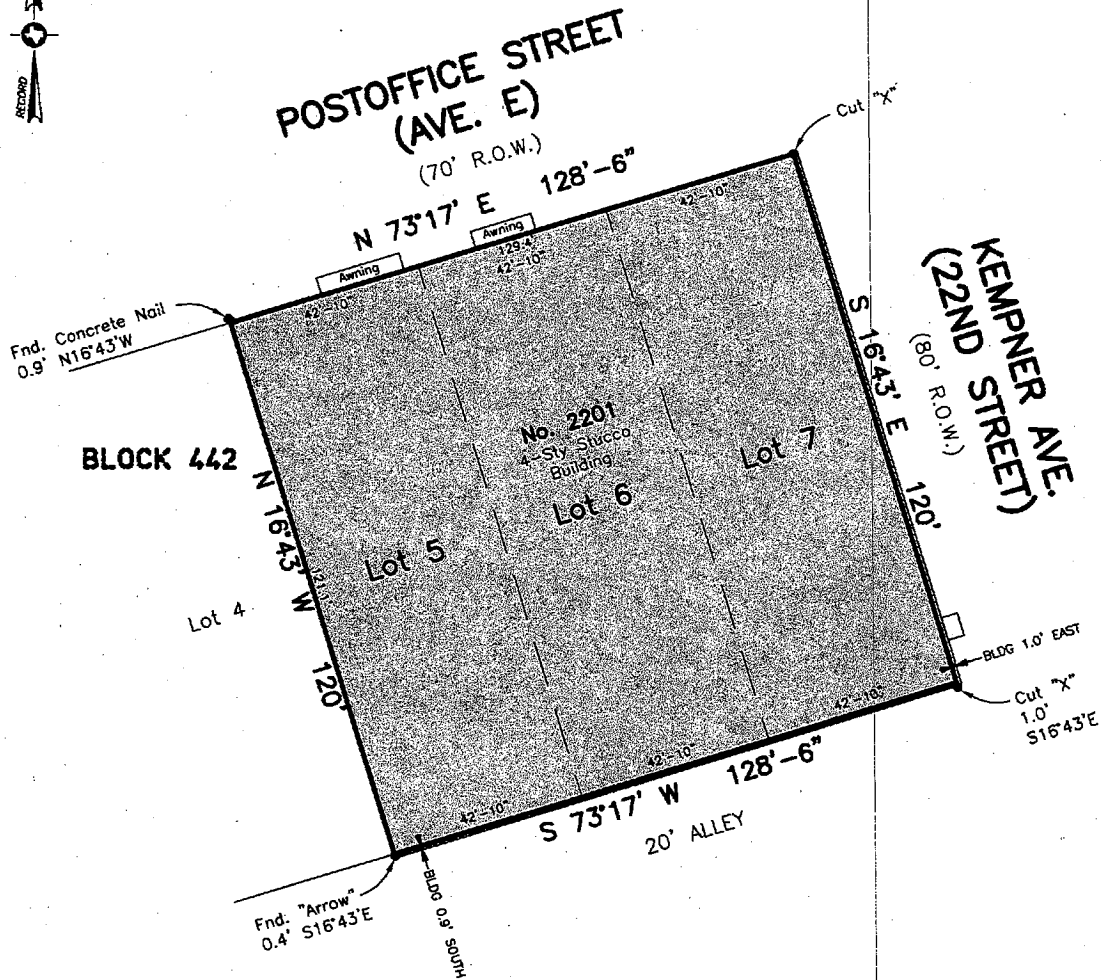
- Exhibit "A" - Legal Description of the Property
- Exhibit "B"- Map
- Exhibit "C"- Allocated Interests
- Exhibit "D"- Insurance Requirements
- Exhibit "E" - Inspections

Please return to:

Jerome Karam  
353 E. Parkwood  
Friendswood Tx 77546



# EXHIBIT "A"



Bearings based on Monumentation of West R.O.W. line of Kempner Avenue

May 19, 2006

SCALE: 1" = 30'

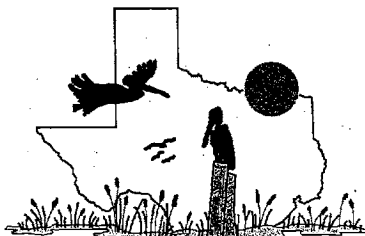
Survey of Lots 5, 6, and 7, in Block 442 in the City and County of Galveston, Texas. This survey is based on the Map of the City of Galveston in common use.

I hereby certify that on the above date, the herein described property, together with improvements located thereon, was surveyed on the ground and under my direction, and that this map, together with dimensions as shown hereon, accurately represents the facts as found on the ground this date.

COASTAL SURVEYING OF TEXAS

Patrick A Jordan  
Registered Professional  
Land Surveyor 5525

Surveyed based on commitment for title insurance prepared by Stewart Title Guaranty Company under File No. 04208425, dated January 31, 2005.



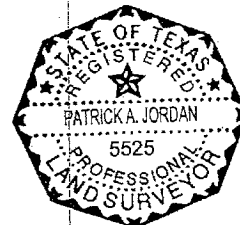
COASTAL SURVEYING OF TEXAS, INC.

This property does lie within the 100 Year Flood Plain as established by the Federal Emergency Management Agency.  
CB  
06-0282

GALVESTON OFFICE  
8017 HARBORSIDE DRIVE (physical)  
P.O. BOX 877 (mailing)  
GALVESTON, TX 77553  
ph (409) 740-1517 fx (409) 740-0377

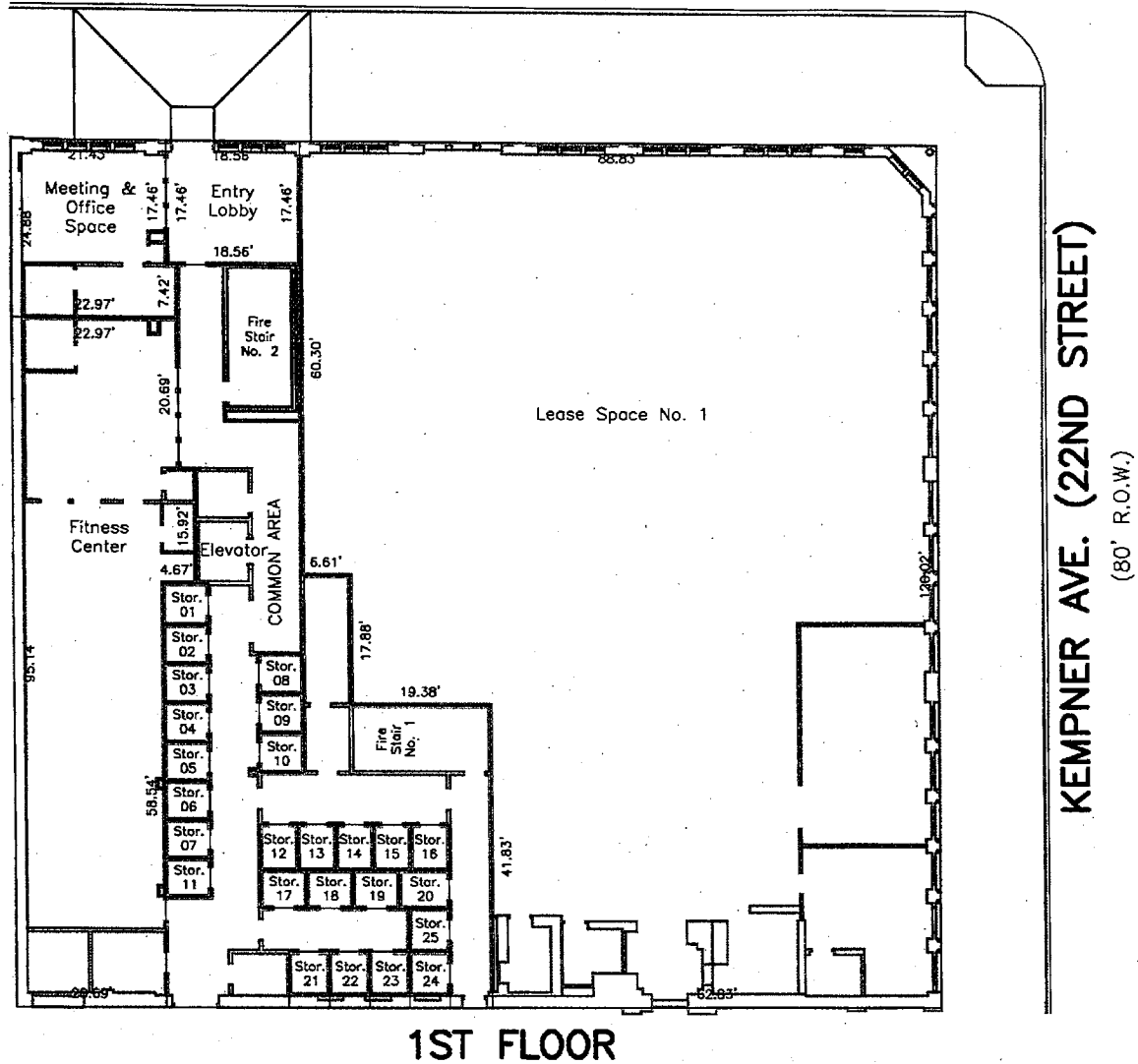
CRYSTAL BEACH OFFICE  
3120 HWY 87 (physical)  
P.O. BOX 2742 (mailing)  
CRYSTAL BEACH, TX 77650  
ph (409) 684-8400 fx (409) 684-6112

WWW.SURVEYGALVESTON.COM

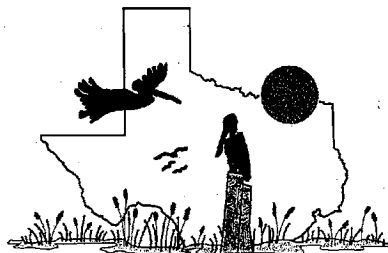


This property is subject to Zoning Ordinances by the City of Galveston and to any restrictions of record.

**EXHIBIT "B"—PG. 1**  
**POSTOFFICE STREET (AVE. E)**  
 (70' R.O.W.)



SCALE: 1" = 20'



**COASTAL SURVEYING OF TEXAS, INC.**

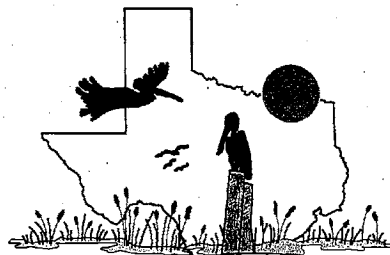
GALVESTON OFFICE 8017 HARBORSIDE DRIVE (physical) P.O. BOX 877 (mailing) GALVESTON, TX 77553 ph (409) 740-1517 fx (409) 740-0377	CRYSTAL BEACH OFFICE 3120 HWY 87 (physical) P.O. BOX 2742 (mailing) CRYSTAL BEACH, TX 77650 ph (409) 684-6400 fx (409) 684-6112
----------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------

**NOTE:**  
 Elevations on the first floor are between 6.00 feet and 19.86 feet based on a finish floor elevation of 6.00 feet at ground level.

## EXHIBIT "B"—PG. 2

### 1ST FLOOR

AREA	SQ. FT.	FLOOR TOTAL	% OF TOTAL
Meeting & Office Space	545	13292	4.100
Entry Lobby	324	13292	2.437
Fitness Center	2090	13292	15.724
Lease Space No. 1	9455	13292	71.133
Storage 01	36	13292	0.271
Storage 02	33	13292	0.248
Storage 03	33	13292	0.248
Storage 04	33	13292	0.248
Storage 05	33	13292	0.248
Storage 06	33	13292	0.248
Storage 07	33	13292	0.248
Storage 08	34	13292	0.256
Storage 09	34	13292	0.256
Storage 10	34	13292	0.256
Storage 11	33	13292	0.248
Storage 12	33	13292	0.248
Storage 13	33	13292	0.248
Storage 14	33	13292	0.248
Storage 15	33	13292	0.248
Storage 16	33	13292	0.248
Storage 17	34	13292	0.256
Storage 18	34	13292	0.256
Storage 19	34	13292	0.256
Storage 20	36	13292	0.271
Storage 21	43	13292	0.324
Storage 22	43	13292	0.324
Storage 23	43	13292	0.324
Storage 24	43	13292	0.324
Storage 25	34	13292	0.256
TOTAL	13292	13292	100.00



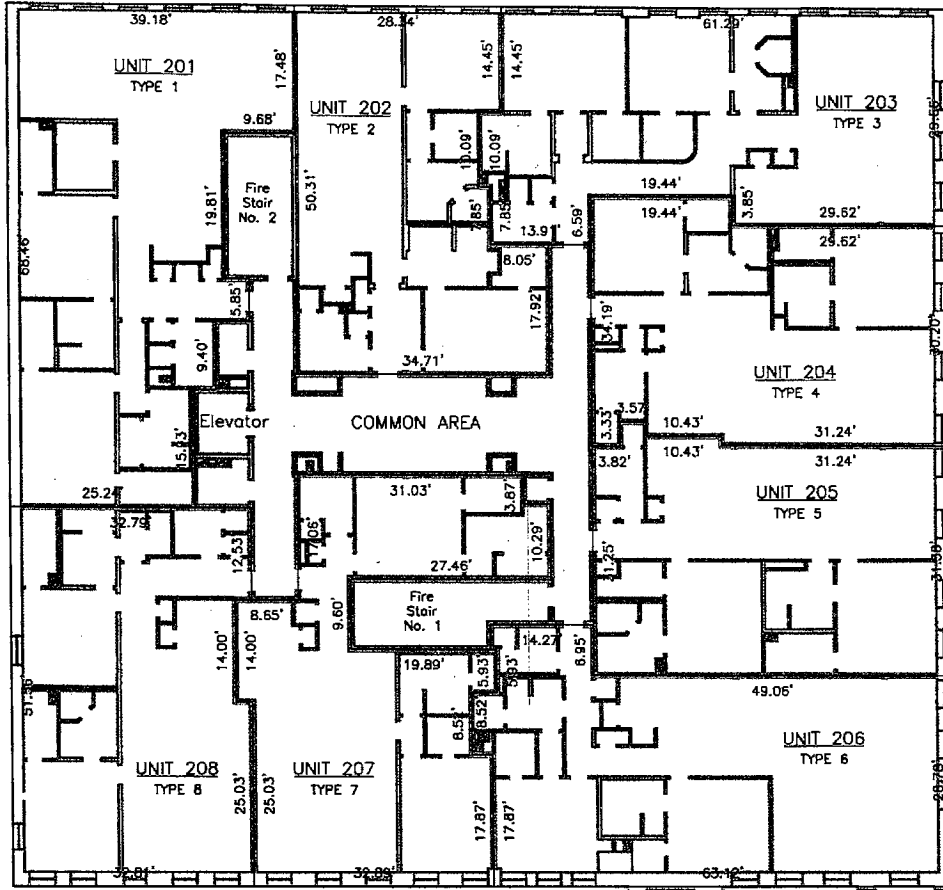
**COASTAL SURVEYING OF TEXAS, INC.**

GALVESTON OFFICE  
 8017 HARBORSIDE DRIVE (physical)  
 P.O. BOX 877 (mailing)  
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 CRYSTAL BEACH, TX 77650  
 ph (409) 684-6400 fx (409) 684-6112

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# EXHIBIT "B"—PG. 3

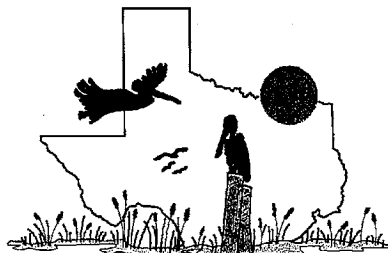


## 2ND FLOOR

AREA	SQ. FT.	FLOOR TOTAL	% OF TOTAL
UNIT 201	2127	13798	15.415
UNIT 202	1496	13798	10.842
UNIT 203	1821	13798	13.198
UNIT 204	1532	13798	11.103
UNIT 205	1564	13798	11.335
UNIT 206	1935	13798	14.024
UNIT 207	1664	13798	12.060
UNIT 208	1659	13798	12.023
<b>TOTAL</b>	<b>13798</b>	<b>13798</b>	<b>100.00</b>



SCALE: 1" = 20'



### COASTAL SURVEYING OF TEXAS, INC.

GALVESTON OFFICE  
 8017 HARBORSIDE DRIVE (physical)  
 P.O. BOX 877 (mailing)  
 GALVESTON, TX 77553  
 ph (409) 740-1517 fx (409) 740-0377

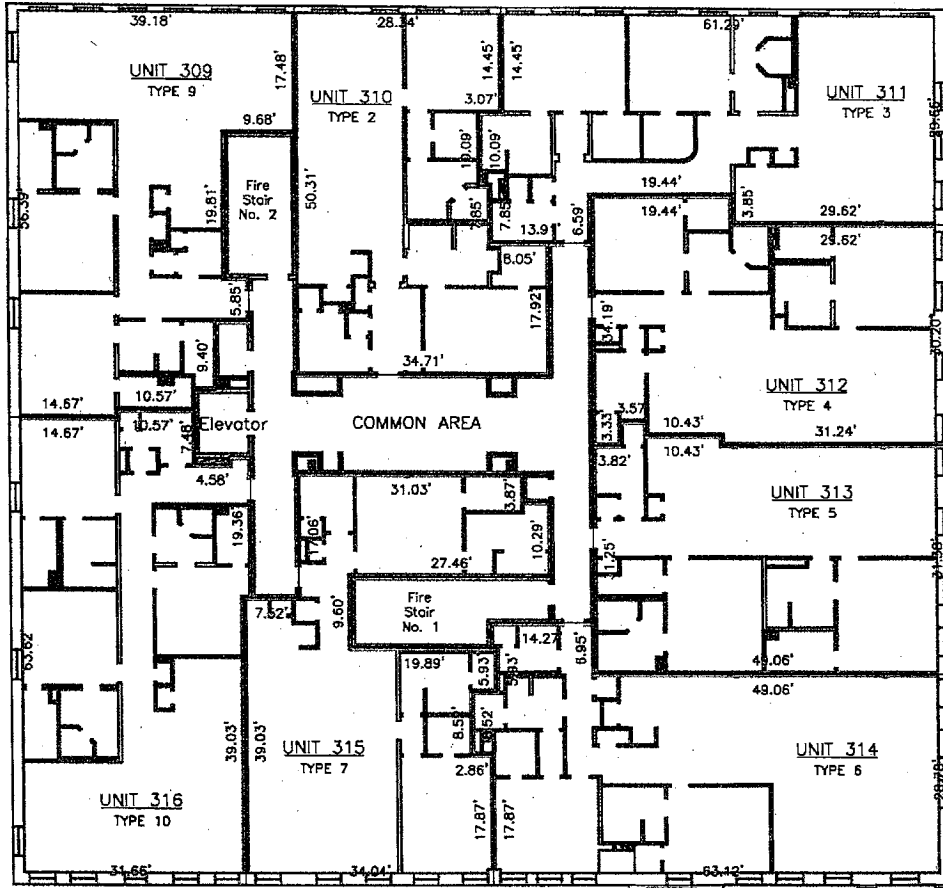
CRYSTAL BEACH OFFICE  
 3120 HWY 87 (physical)  
 P.O. BOX 2742 (mailing)  
 CRYSTAL BEACH, TX 77650  
 ph (409) 684-6400 fx (409) 684-5112

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#### NOTE:

Elevations on the Second floor are between 21.38 feet and 34.43 feet based on a finish floor elevation of 6.00 feet at ground level.

# EXHIBIT "B"—PG. 4

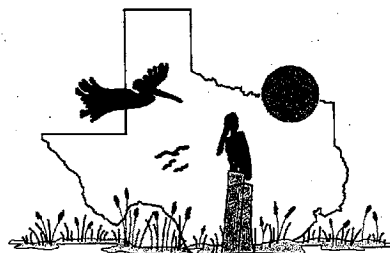


## 3RD FLOOR

AREA	SQ. FT.	FLOOR TOTAL	% OF TOTAL
UNIT 309	1811	13845	13.081
UNIT 310	1496	13845	10.805
UNIT 311	1821	13845	13.153
UNIT 312	1532	13845	11.065
UNIT 313	1564	13845	11.296
UNIT 314	1935	13845	13.976
UNIT 315	1677	13845	12.113
UNIT 316	2009	13845	14.511
TOTAL	13845	13845	100.00



SCALE: 1" = 20'



### COASTAL SURVEYING OF TEXAS, INC.

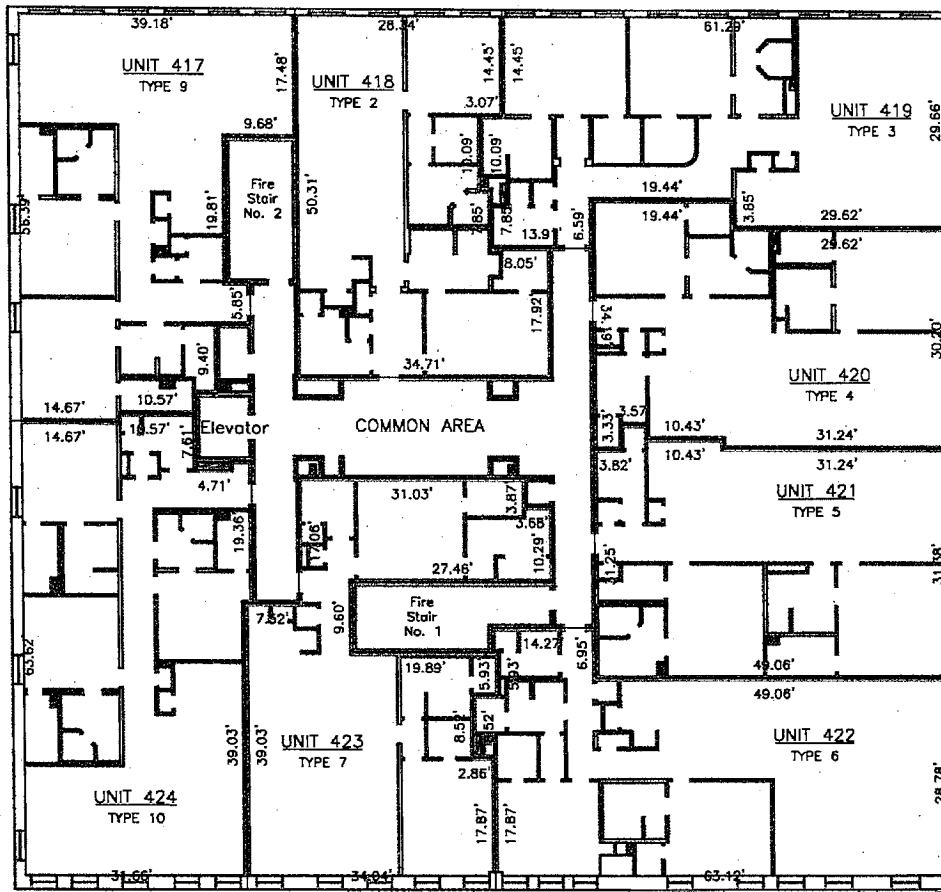
GALVESTON OFFICE: 8017 HARBORSIDE DRIVE (physical), P.O. BOX 877 (mailing), GALVESTON, TX 77553, ph (409) 740-1517 fx (409) 740-0377.  
 CRYSTAL BEACH OFFICE: 3120 HWY 87 (physical), P.O. BOX 2742 (mailing), CRYSTAL BEACH, TX 77650, ph (409) 684-6400 fx (409) 684-6112.

**NOTE:**

Elevations on the third floor are between 35.68 feet and 47.30 feet based on a finish floor elevation of 6.00 feet at ground level.



# EXHIBIT "B"—PG. 5

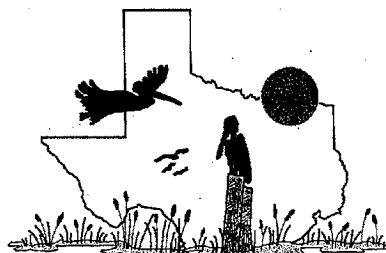


## 4TH FLOOR

AREA	SQ. FT.	FLOOR TOTAL	% OF TOTAL
UNIT 417	1811	13844	13.082
UNIT 418	1496	13844	10.806
UNIT 419	1821	13844	13.154
UNIT 420	1532	13844	11.066
UNIT 421	1564	13844	11.297
UNIT 422	1935	13844	13.977
UNIT 423	1677	13844	12.114
UNIT 424	2008	13844	14.504
<b>TOTAL</b>	<b>13844</b>	<b>13844</b>	<b>100.00</b>



SCALE: 1" = 20'



**COASTAL SURVEYING OF TEXAS, INC.**

CALVESTON OFFICE  
8017 HARBORSIDE DRIVE (physical)  
P.O. BOX 877 (mailing)  
CALVESTON, TX 77553  
ph (409) 740-1517 fx (409) 740-0377

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CRYSTAL BEACH, TX 77650  
ph (408) 684-6400 fx (409) 684-6112

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**NOTE:**

Elevations on the fourth floor are between 48.35 feet and 59.70 feet based on a finish floor elevation of 6.00 feet at ground level.

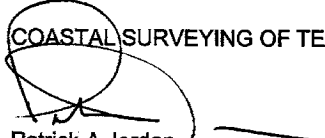


May 30, 2006

I hereby certify that on the above date, that this map, together with dimensions as shown hereon, accurately represents the facts as found on the ground this date, all square foot calculations are based on the centerline of interior walls and the exterior outer walls.

This map and property description contained herein contain all information required by Section 82.059 of the Texas Property Code.

COASTAL SURVEYING OF TEXAS

  
Patrick A Jordan  
Registered Professional  
Land Surveyor 5525



06-0282\_cert

EXHIBIT C

**ALLOCATED INTERESTS**

<b>UNIT</b>	<b>SQUARE FOOTAGE</b>	<b>PERCENTAGE OF OWNERSHIP</b>	<b>ESTIMATED MONTHLY ASSESSMENT</b>
201	2157	4.18%	\$431.40
202	1526	2.95%	\$305.20
203	1851	3.58%	\$370.20
204	1562	3.02%	\$312.40
205	1594	3.09%	\$318.80
206	1965	3.80%	\$393.00
207	1694	3.28%	\$338.80
208	1689	3.27%	\$337.80
309	1841	3.56%	\$368.20
310	1526	2.95%	\$305.20
311	1851	3.58%	\$370.20
312	1562	3.02%	\$312.40
313	1594	3.09%	\$318.80
314	1965	3.80%	\$393.00
315	1707	3.30%	\$341.40
316	2039	3.95%	\$407.80
417	1841	3.56%	\$368.20
418	1526	2.95%	\$305.20
419	1851	3.58%	\$370.20
420	1562	3.02%	\$312.40
421	1594	3.09%	\$318.80
422	1965	3.80%	\$393.00
423	1707	3.30%	\$341.40
424	2038	3.94%	\$407.60
<b>Retail Unit</b>	<b>9455</b>	<b>18.30%</b>	<b>\$1,134.60</b>
<b>TOTAL:</b>	<b>51662</b>	<b>100%</b>	<b>\$9,576.00</b>

**EXHIBIT "D"**  
**INSURANCE REQUIREMENTS FOR THE ASSOCIATION AND UNITS**

The Association and each Unit, but only to the extent required below, shall purchase and maintain insurance policies ("Policies") in compliance with the following requirements:

**COVERAGE AND LIMITS**

<b>TYPE</b>	<b>WHO MUST CARRY</b>	<b>MINIMUM AMOUNT</b>	<b>OTHER REQUIREMENTS</b>
1. <b>Workers' Compensation and Employer's Liability</b>	1. The Association 2. Retail Unit	Statutory Limits, plus employer's legal liability of \$500,000 per occurrence	1. No "alternative" forms of coverage will be permitted.
2. <b>Commercial General Liability or Comparable Homeowner's Liability (Occurrence Basis)</b>	1. The Association 2. All Owners*	\$ 1,000,000 per occurrence \$ 2,000,000 general aggregate \$ 2,000,000 product-completed operations aggregate limit. \$ 1,000,000 personal and advertising injury limit \$ 50,000 fire legal liability \$ 5,000 medical expense limit  *\$1,000,000 combined single limit coverage	1. ISO form CG 0001 0196, or equivalent 2. Insured Parties will be named as "additional insureds" on ISO Form CG 20 11 and if performing improvements CG 2026 or equivalent 3. Aggregate limit of insurance (per location endorsement ISO CG2504 , or equivalent) and if performing improvements, also CG 2503) 4. Deletion of exclusions for liability assumed under contract (personal and advertising injury) 5. Defense will be provided as an additional benefit and not included within the limit of liability 6. Coverage for products liability CG2407 or equivalent (only required if Unit has restaurant use) 7. Total pollution exclusion with heating equipment and hostile fire exception CG 21 65 or equivalent.
3. <b>Business Automobile Liability (Occurrence Basis)</b>	1. The Association 2. Retail Unit	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence or its equivalent.	1. ISO form CA 0001 1001, or equivalent 2. Insured Parties will be named as "additional insureds" 3. Includes owned, hired and non-owned vehicles

4. Liquor Liability & Dram Shop Liability (Occurrence Basis)	1. Retail Unit (if sell liquor)	\$1,000,000 per occurrence	
5. Builder's Risk Property Insurance (fire and extended property coverage following construction)	1. Association	<ol style="list-style-type: none"> <li>Coverage on a completed value basis (100% of the replacement cost following construction)</li> <li>Amount of coverage: initial price of the work subject to subsequent modification of the work</li> <li>Property covered: <ul style="list-style-type: none"> <li>All structures under construction</li> <li>All property for installation, including materials and supplies involved in such construction</li> <li>All temporary structures including scaffolding, falsework and temporary buildings involved in such construction</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>ISO "All Risk" coverage form, or equivalent</li> <li>Required Endorsements: <ul style="list-style-type: none"> <li>Agreed Value (no coinsurance) Policy limit</li> <li>Damage arising from collapse Policy limit</li> <li>Debris removal additional limit \$1,000,000 or 2.5% of loss – whichever is greater</li> <li>Ordinance or law Policy limit*</li> <li>Pollutant clean up or removal \$25,000</li> <li>Preservation of property Policy limit</li> <li>Replacement cost Policy limit</li> <li>Terrorism (covering losses from domestic and international terrorist acts) Policy limit</li> <li>Testing Policy limit</li> <li>Damage resulting from faulty or defective workmanship or materials Policy limit</li> </ul> </li> <li>Flood Insurance Statutory Limit</li> <li>No protective safeguard warranty permitted.</li> <li>Name Insured Parties as Loss Payees.</li> </ol>
6. Fire and Extended Coverage Insurance (Personal Property of Owner and any alterations, additions, betterments and improvements made by the Owner to the Unit or Limited Common Elements appurtenant to its Unit and its Storage Space)	1. The Owners	1. 100% of the replacement cost	1. ISO "All Risk" coverage form or equivalent for Home Owner's Coverage
7. Directors and Officers Liability (Occurrence Basis)	1. The Association	\$500,000	

**OTHER REQUIREMENTS:**

1. **DEDUCTIBLES.** Any aggregate limit which is reduced below 75% of the limit required by this Master Declaration because of losses incurred must be reinstated by the party whose limit has been reduced. No deductible or self-insured retention in excess of \$25,000 (20% of the replacement cost with regard to the Causes of Loss – Special Form insurance).

2. **EVIDENCE OF INSURANCE REQUIRED**

The Association and each Owner shall provide a Certificate of Insurance to the Association, Declarant and each Owner upon the written request of the Association or an Owner. The “ACORD Form 25 Certificates of Liability Insurance” (with regard to liability insurance policies), the “ACORD Form 27” (with regard to property insurance policies) or another pre-approved substitute is the required form in all cases where reference is made herein to a “Certificate of Insurance”. The Certificate of Insurance must specify the additional insureds and waivers of subrogation. If requested in writing by the Association, Declarant or an Owner, the Association and each Owner shall provide the requesting party a certified copy of any or all Policies or endorsements required under this Master Declaration.

3. **INSURANCE REQUIRED FOR THE TERM OF THE ASSOCIATION**

With regard to the insurance required of a particular Unit, any and all insurance required by this Agreement with regard to such Unit shall be maintained until the earlier of (a) the removal of a Unit from the Condominium or (b) the date that the Association is terminated.

Exhibit "E"  
INSPECTIONS

Preventive  
Maintenance Plan

THE EIBANDS LUXURY CONDOMINIUMS

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## Introduction

There are many building maintenance and repair items that are important and it can be confusing trying to establish which are the most critical. To simplify things, this Best Practice Maintenance Manual has been compiled. It is a list of items that have been deemed to be important to maintain and are required to be followed. These are by no means all-inclusive, nor do they replace any of the information provided by a manufacturer regarding a specific material or piece of equipment. Every effort should be made to procure necessary information from the manufacturer regarding the proper maintenance of materials and equipment located on this property.

Maintenance is the preservation and upkeep of structures, appurtenances and facilities as nearly as possible in the condition in which they have been constructed. For these facilities to function as designed and constructed, they must be properly maintained. All structures require periodic maintenance inspections and repairs. Maintenance functions vary from routine repairs to extensive emergency repairs resulting from major storm damage or other events. It also includes performing miscellaneous preventive maintenance acts that will forestall deterioration of the building.

## Maintenance Program

A comprehensive maintenance program has been established for this property. Elements of a maintenance program include establishing maintenance goals, assigning responsibilities, producing a task list and schedule and keeping records.

The maintenance program includes property maintenance inspections that are conducted on a regularly scheduled basis. The results are to be recorded and made part of the property's records. Maintenance and repair work orders should be issued to initiate any repairs found necessary as the result of these inspections.

Preventative maintenance can avoid repairs, extend the life expectancy of many components and in some cases, reduce energy consumption. A systematic maintenance approach also allows one to monitor certain conditions and components. Regular inspections will give one enough advance warning to allow for several quotes in order to make a educated and cost effective purchase. If on the other hand, no maintenance is done, there is very little time to perform comparative shopping.

In addition to monitoring systems which wear out, structural monitoring should also be performed. It is not uncommon for people who have been living in a building for some time to suddenly realize that a door frame is out of square and the door does not close properly. With regular maintenance, the cracks which occur in the wall surfaces adjacent to the door frame can be monitored. Knowing whether these cracks have appeared suddenly or have been increasing at a specific rate, is valuable information when diagnosing the problem and designing a repair.

At times, these inspections may yield insight for inexpensive retrofit opportunities. No design is perfect. Over time issues could arise, especially regarding a waterproofing, where an inexpensive



retrofit could avert future potentially costly damage. These preventive retrofit opportunities should be taken advantage of as part of a pro-active maintenance program.

## Records

Accurate, written records should be kept of all inspections conducted at work performed to the property. Records should also include contracts for work performed, an equipment inventory list and any warranty information available. These records should be maintained for at least ten years and stored in an organized filing system.

## Regarding Manufacturer's Suggested Maintenance

The following is a list of various building components that can be found on the property along with suggested maintenance practices. This list is not meant to replace the manufacturer's suggested maintenance for warranty purposes of any material or equipment. If information regarding maintenance is obtained from a particular manufacturer on a particular item, and it differs from the suggestions hereto, the manufacturer's instructions should be followed.

## Structure

Many structural problems can be avoided if proper maintenance is performed on a building. Others can be minimized if the problem is spotted and corrected early. Water intrusion issues such as inadequate site drainage or a malfunctioning roof drainage system among others, can have a dramatic effect on structural systems. It is critical that the structure be routinely inspected so that any potential sign of structural problems can be monitored. Minor movement due to normal setting and shrinkage should be anticipated. However components showing significant movement over a six month period can be indications of more serious problems.

## Superstructure

- \* On a quarterly basis Maintenance and Operations ("M&O") staff (or qualified technician) should:
  - Inspect wall and ceiling surface cracks, bulges or other anomalies. Wall and ceiling surface anomalies discovered should be monitored over time for evidence of significant movement.
  
- \* On a semi-annual basis, M&O staff (or qualified technician) should:
  - Inspect attics for water stains on the underside of the roof sheathing. This should be accomplished at the same time as the roof covering material inspections.
  - Look for rot, mildew and fungus indicating high humidity levels in the attic. Check to make sure the insulation is not wet.

- Check and monitor door frames for any change in squareness.
  - Check attic vents to ensure that they are not obstructed. Often, birds build nests in these vents. Vents at the eaves are often plugged with insulation. Watch for evidence of pests (squirrels, raccoons, etc.).
  - Insulation is prone to being blown around during periods of high wind. Check for bare spots and ensure that insulation is not covering lights, vents, etc.
  - Appropriate action should be taken to monitor any problems noted during inspections. Necessary repairs should be completed immediately.
- \* On an annual basis, M&O staff (or qualified technician) should:
- Check the condition of structural framing components, floors, roof framing, and walls. These items should be inspected for deterioration and movement.
- \* Every 5 years (or following an observed change), M&O staff should:
- Have a structural inspection performed by a professional engineer.

## Substructure

### Foundation

- \* On a quarterly basis, M&O staff (or qualified technician) should:
- Conduct cleaning and general housekeeping.
- \* On a semi-annual basis, M&O staff (or qualified technician) should:
- Check foundation walls, where visible, for evidence of deterioration and movement.
  - Repair and monitor visible leaks. Limited dampness from time to time can be anticipated with below grade foundation walls and is generally not a serious problem. Flowing water or chronically damp areas should be inspected by a qualified waterproofing technician or professional engineer.
  - Note and monitor cracking. Cracks and voids should be filled. Filling cracks allows for easy monitoring of movement between inspections.
  - Appropriate action should be taken to monitor any problems noted during inspections. Necessary repairs should be completed immediately.

- \* On an annual basis, M&O staff (or qualified technician) should:
  - Identify and repair spalls, cracks and other deterioration to the concrete.
- \* Every five years (or following an observed change), M&O staff should:
  - Have a structural inspection performed by a professional engineer.

#### Related Issues

#### Site Drainage:

- \* The grading immediately adjacent to the building should be monitored to ensure an effective drainage is maintained. (see drainage)
- \* Catch basins should be cleaned and tested semi-annually. (see drainage).

#### Building Envelope:

- \* All elements of the building envelope should be monitored closely for water intrusion problems as they can greatly affect the long-term performance of the structure. (see building envelope)

#### Building Envelope

A building's maintenance program should cover all components of the building envelope including roofing, exterior walls, doors and windows. Effective care of the building skin requires regular inspections, cleaning, and detection of problems such as water penetration, drainage and structural damage.

#### Roofing

Keeping a roof in top shape is necessary to prevent large repairs or early replacement. The roof is concrete with a ballasted bituminous coating. All roofing materials should be inspected at least twice annually, fall and spring. Also roofing materials should be checked after major storms.

Common methods of roof inspection are examination by directly going on the roof, from the ground using binoculars and from below the roof inside the structure. Generally a combination of these methods is used for a thorough inspection. There are safety issues involved with roof inspection and it is advisable to hire a roofing professional to perform the task.

Repair roof leaks as soon as possible to prevent deterioration of the building and damage to the contents. If leaks occur, damaged materials such as drywall, ceiling tiles, insulation, and carpet

should be cleaned, repaired, and/or replaced to prevent the possibility of mold and other indoor air problems.

## Roof Drainage

Roof drainage is accomplished by a gutter drainage system. Gutters and downspouts are designed to collect runoff from the roof and divert it away from the building. Most of the downspouts discharge into the municipal storm drainage system. Proper functioning gutters keep water off of the exterior walls of the building and keep the surrounding soil from being eroded. The gutter drainage system also helps prevent the foundation from being inundated with excess water. Gutters and downspouts are vital requirements. If not maintained properly however, severe damage can result. Any leaks in gutters should be repaired promptly. The best time to inspect gutters is during a moderate to heavy rain event.

- \* On a semi-annual basis (or following an observed change) M&O staff should:
  - Check for breaks, open joints and sags.
  - Check gutters and downspouts for blockage, leakage (from rust holes or leaking joints) and areas requiring re-securing or re-sloping.
  - Note paint deterioration.
  - Check downspout seams for splitting (the seam is usually against the wall).
  - Check that the downspouts are correctly positioned and are discharging into the drainage pipes or splash blocks. If there are signs of erosion present, a structural inspection could be necessary.
  - Maintenance and repairs of roof drainage system should be completed as soon as possible after problems have been observed.
  - Clean leaves, seeds and other debris from gutters and downspouts.
  - Pay special attention to cleaning elbows and bends. A clogged downspout can be generally be opened with a plumber's snake.
  - Keep hangers securely fastened.
  - Plug holes, splits and cracks.

## Exterior Walls

Preventive maintenance of the building exterior will have health and repair benefits, in that problems with costly water damage can be lessened or prevented. A building that has not been carefully maintained on the outside will begin to deteriorate on the inside as well. If seemingly small problems that arise are not taken care of in a routine systematic way, large problems will be the result. The exterior walls of the subject property are cast in place concrete.

## General Exterior

- Inspect and make repairs to Porches and Decks:
- Railings should be kept secure
- Railings should be treated for rust and re-painted every five years

- Cut back overgrown vegetation and branches near exterior walls.
- Vines should be kept cut back from wood trim (windows, doors, eaves, etc.) and from gutters

#### Related issues

- Keep rain gutters and downspouts cleaned out and leak free so that water is effectively carried away from the exterior surfaces of the building. (see roof drainage)

#### Windows and Doors

- On an annual basis, M&O staff (or qualified technician) should:
  - Inspect exterior windows and doors for physical damage and improper seals.
  - Inspection to include, but not be limited to, jambs, frames, hinges, thresholds, closing devices, lock sets, latches, glazing, push plates, kick plates, pull handles, screens, and weather stripping.
  - Doors and windows should be kept functional and in good repair
- Touch-up caulk all window and door frame perimeters to prevent water, draft and pest penetration.
- Every 5 years (or after a system change), M&O staff should:
  - Touch-up or replace caulking in exposed locations each time the building is painted.
  - Replace weather-stripping every 5-10 years.

#### Doors and Windows: General Notes

- Keep sill and track areas free of dirt and other debris.
- Keep window weep holes clear.
- Repair damaged caulk around frames to prevent water penetration.
- Never use a high-pressure spray nozzle to rinse windows.

#### Pest Management – Indoor

A pest control program should be maintained for all Common Elements within the building. This includes, but is not limited to, insects, spiders, and rodents. The Association shall maintain all existing termite protection contracts along with any new contracts that may be a result of new termite infestation, new construction and/or renovation.

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Inspect for signs of termite damage.
    - Consult with a professional pest control company if termite damage is found.
  - Clear any leaves and debris that rests at the base of the building foundation.
  - Check that water from the sprinklers does not hit the building exteriors.

- On an annual basis, M&O staff (or qualified technician) should:
  - To prevent a pest infestation, decayed wood should be removed from around the building.

#### Pest Management: General Notes

- Chemical control of pests should be undertaken by qualified pest control company.
- Every 3 to 5 years have a moisture assessment conducted of the building envelope.
- If possible, repair any damp areas in the building.

#### HVAC

The objective of an HVAC system is to provide comfort and good indoor air quality. The goal of an HVAC maintenance program is to meet those needs while also ensuring reliability, energy efficiency, and minimum system life cycle cost. Maintenance reduces life cycle cost by extending equipment life and avoiding premature replacement. Maintenance also improves reliability and helps reduce frustrating disruptions.

#### General Notes:

- The manufacturer's instructions should be followed carefully.
- Follow any codes and regulations related to HVAC system maintenance and operation.
- A qualified technician should be engaged to inspect the system and recharge it if necessary annually.
- The outdoor equipment should be level. If the outdoor component settles or needs to be moved, adjustments should be made by a specialist.
- A noisy fan should be inspected as it may mean a bearing problem or misalignment.
- Debris and vegetation should be kept away from the outdoor component of the system.
- Most manufacturers prefer to have the outdoor component left uncovered during the winter to prevent rust.
- Condensate drains on rooftop units should discharge to roof drains or gutters in an effort to reduce water from ponding around units.
- The circuit breakers related to the HVAC equipment should be checked monthly for proper operation.

#### **Packaged Air Conditioners/Fan Coils**

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Replace air filters.
  - Inspect and test dampers.
  - Check and clean evaporator and condensing coils to remove dirt and possible mildew growth.
    - Care should be taken to ensure the interior components are installed in the correct orientation after cleaning.
  - Check and clean catch pans and condensate drains.

- Check control settings.
  - Inspect acoustic isolators.
  - Inspect refrigerant system fittings.
  - Check furnace operation.
    - Electric furnaces should be inspected by a qualified technician every year to ensure that all the components are operating properly and no connections are loose or burned.
  - Check cabinet for air leaks.
- On a semi-annual basis, M&O staff (or qualified technician) should:
    - Check electrical connections.
    - Check valve operation, before the start of the heating and cooling seasons.
  - On an annual basis, M&O staff (or qualified technician) should:
    - Inspect piping insulation.
    - Check condition of interior belts - replace if not in good condition or every two years.
    - Ensure blower motors and condenser fan motors receive proper lubrication as recommended by the manufacturer.
  - Every 5 years (or after a system change), M&O staff should:
    - Measure supply air flow.
    - Check refrigerant charge.
    - Check cooling efficiency.

### **Split System Air Conditioning Units**

Split systems should be inspected annually by a qualified technician.

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Replace air filters.
  - Inspect and test dampers.
  - Check and clean evaporator and condensing coils to remove dirt and possible mildew growth.
    - Care should be taken to ensure the interior components are installed in the correct orientation after cleaning.
  - Check and clean catch pans and condensate drains.
  - Check control settings.
  - Inspect refrigerant system fittings.
  - Check cabinet for air leaks.
  - Check electrical connections.
    - Inspect contactors, capacitors, and wiring.
  - Check valve operation, before the start of the heating and cooling seasons.
- On an annual basis, M&O staff (or qualified technician) should:
  - Inspect the refrigerant lines for damaged, missing or loose insulation.
  - Inspect and lubricate fan and blower motors where applicable.

- Every 5 years (or after a system change), M&O staff should:
  - Measure supply air flow.
  - Check refrigerant charge.
  - Check cooling efficiency.

### **Air Filters**

- Inspect and replace filters regularly four times per year.
- Select filters that provide the best filtration possible without compromising system performance.
- Turn off the fan while replacing filters to keep debris out of the ducts.
- Do not block off portions of the filter bank unless excess airflow is a problem.
- Clean filter area while fans are off.
- Make sure that filters are properly fitted to prevent air from bypassing the filter.
- Check filter seals.

### **Ducts**

- Inspect ducts every two years.
- Check for and repair any leaks. Leakage from ducts has a big impact on system efficiency and capacity.
- Check for cleanliness, obstructions, water damage, visible microbial growth and hazardous materials.
- If contamination is found in the ducts, clean ducts using HEPA vacuuming equipment.
- If biocides must be used, choose products that are registered by the EPA and follow manufacturer's instructions.
- Maintain pressure in the duct cleaning area.
- Clean coils and drip pans at the same time.

### **Electrical Systems and Lighting**

The M&O staff needs to know the location of transformers, panel boards, branch circuits and all electrical equipment such as motors.

- Immediate Action Issues
  - A panel which is warm to the touch or smells of burned insulation should be brought to the attention of an electrician.
  - Burned wires indicating loose or poor connections should be repaired by qualified personnel.
  - Loose outlets and switches should be tightened.
  - Frayed or damaged wire, including extension cords, appliance cords and plugs, should be replaced.
  - Poor or loose connections observed should be corrected immediately by a qualified electrician.
- On a monthly basis, M&O staff (or qualified technician) should:
  - All breakers should be turned off and on to ensure none have seized.



- Ground fault circuit interrupter electrical outlets should be tested.
  - Exterior lighting shall be maintained for security of persons and property around buildings and in parking areas.
  - Automatic control devices for exterior lighting should be checked.
  - Test exit and emergency lighting for proper operation; monitor battery life for emergency lighting systems and replace batteries promptly.
- On an annual basis, M&O staff (or qualified technician) should:
    - The main electrical panel should be checked annually for rust or water marks indicating moisture penetration.
    - Check for loose wiring and bolts, scratches and/or other damage to the panels.
    - Aluminum wire connections inside the distribution panel should be tightened. This should be done by a qualified electrician.

### **Electrical Systems: General Notes**

- The area around the panel for roughly three feet in all directions should be kept clear of storage. Make sure items are not obstructing access.
- All circuits should be labeled.
- Exterior outlets should have proper covers.
- Exterior outlets should be replaced with ground fault circuit interrupter type outlets.
- Panel rooms shall be locked to prevent unauthorized persons from having access to equipment.
- Flammable materials must be stored away from all equipment.
- Main transformers, switchgear, and breaker panels shall be accessible and kept clear of materials and supplies at all times. Covers shall be in place.

### **Electric Motors**

- Inspected, cleaned and oiled (if needed) at least twice a year.
- Follow manufacturer's maintenance suggestions.

### **Controls**

- Test controls regularly for proper operation.
- Perform periodic adjustments - or "tune-ups" - to maintain proper control function.
- Respond promptly to any control complaints to avoid user tampering.
- Keep a copy of the manufacturer's brief control instructions with the control (e.g., inside the cover).
- If a control is accessible to room occupants, place a contact number near the control for individuals to call for assistance if they have difficulty with the control.

### **Plumbing**

The M&O staff should know the location of all types of pipes, pumps, fixtures, fittings, valves, and other related items to be maintained.

### **Plumbing Systems: General Notes**

- Licensed personnel must inspect back flow prevention devices annually.

- Locate and eliminate leaks in water piping as quickly as possible to prevent serious damage to the building structure and finished materials.
- Precautions should be taken to ensure that plumbing in outside areas and garage will not freeze during winter months.
- Inspect insulation on pipes prone to condensation. Pay close attention to air conditioning lines.
- Establish a record keeping procedure and work order process for routine maintenance of plumbing system.

### **Domestic Water Systems**

- Immediate Action Issues
  - Locate and eliminate leaks in water tank as quickly as possible to prevent serious damage to the building structure.
- On a quarterly basis, M&O staff (or qualified technician) should
  - Test pressure relief valves.
  - Check for trapped air.
  - Check pumps and motors for pressure, leaks, noise and vibration.
- On a semi-annual basis, M&O staff (or qualified technician) should:
  - Test bleeder devices for operability.
- On an annual basis, M&O staff (or qualified technician) should:
  - Monitor the pH in the water system to prevent mineral build-up and scaling in pipes.
  - Check for corrosion on tank, pipes and pump housings. Treat corrosion and coat if observed.

### **Fire Control: General Notes**

- Extinguishers for each Unit must have a current year inspection tag fastened to them and must be inspected and recharged or pressure tested, if needed, at least annually.
- Emergency lighting and exit light fixtures, if any, in the ClubHouse shall be inspected and tested each month while performing fire extinguisher inspections.
  - Inspect wiring and batteries for corrosion and leakage.

### **Supply Plumbing Pipes**

- Immediate Action Issues
  - Locate and eliminate leaks in water piping as quickly as possible to prevent serious damage to the building structure and finished materials.
- On a quarterly basis, M&O staff (or qualified technician) should:
  - Inspect supply plumbing for leaks.  
Check piping, seals, valves and joints and repair problems immediately.
- On an annual basis, M&O staff (or qualified technician) should:

- Operate the main shut-off valve and critical isolating valves to ensure proper operation in the event of an emergency.
- Verify that backflow prevention devices are functioning properly:
  - Test and calibrate check valve operation of back flow prevention device with test set.

Test frequency may vary depending of local regulations and application.

Bleed air from backflow preventer. Inspect for leaks under pressure.

Clean backflow preventer and surrounding area.

Fill out maintenance checklist and report deficiencies.

### **Water Heaters**

- Immediate Action Issues
  - Take immediate action to remedy any problem observed that could be a safety issue.
- On a quarterly basis, M&O staff (or qualified technician) should:
  - Check pressure gauges and relief valves for proper operation. Modern water heaters have a test lever on the pressure relief valve. If the relief valve does not discharge near a drain, a bucket will be required.
  - Test for deposits on the tank, by draining some water from the bottom of the tank. If there is sludge present drain off a couple of gallons. Be sure to shut off the power or fuel supply prior to draining any water from the tank.
- On an annual basis, M&O staff (or qualified technician) should:
  - Flush tanks annually. Be sure to shut off the power or fuel supply prior to draining any water from the tank.
  - Check the condition of thermal insulation.
  - Check for corrosion. Treat if observed.

### **Water Waste Management**

#### **Storm Water Systems**

- Immediate Action Issues
  - Remove any items obstructing storm drainage system.
  - If sump pumps are inoperable, make repairs immediately.
- On a monthly basis (or after an observed problem), M&O staff (or qualified technician) should:
  - Clean sump pump strainer screens.
  - Check operation of float operated switches for sump pumps. Remove debris from sumps when the debris has reached a depth of half of the distance between the bottom of the drain pipe and the bottom of the sump.

- On an annual basis (or after an observed change), M&O staff (or qualified technician) should:
  - Fill garage floor drain traps with water to ensure that they are not broken. If cracked, or if the water has evaporated, sewer odors will enter the building.
  - Inspect storm sewage lines for debris or other blockages.
  - Verify proper roof drainage and drainage away from building and foundation. (see Roof Drainage)
  - Test sump pumps for proper operation.
    - Inspect and replace if necessary sump pump strainer screens. Check operation of float operated switches.
  - Basement floor drains, exterior drains, and subsurface drains located in the courtyard should be checked and cleaned as necessary. Slow drains within the building should be cleared.

### **Sanitary Waste Disposal**

- Immediate Action Issues
  - Visible waste plumbing should be frequently monitored for leaks.
- Every 5 years (or following a noted change), M&O staff should:
  - Have a condition assessment that includes an examination of all sanitary waste plumbing performed by a qualified plumbing expert or professional engineer.

### **Passenger Elevator**

#### **General Notes**

- A service maintenance agreement shall be held with a licensed contractor that provides for routine examination, lubrication, cleaning, adjustment, replacement of parts, and performance of applicable code required safety tests.
- Equipment rooms and pits shall be kept clean at all times.
- On a monthly basis, M&O staff (or qualified technician) should:
  - Ride cars, checking for any unusual noise or operation.
  - Inside car:
    - Inspect and clean fixtures and signal in operating panel and direction indicator.
    - Check operation of emergency indicator and bell.
    - Check handrails and interior panels for tightness.
    - Check for tripping hazards.
  - Inspect and lubricate rails of hoistway.
  - Hallway corridor:
    - Inspect hall buttons, signal lamps, lanterns and hall position indicator.
    - Inspect starter station, key operation and lamps.
  - Motor room:
    - Inspect machine room equipment.

Inspect tank oil level.

- On a quarterly basis, M&O staff (or qualified technician) should:
  - Inspect and adjust controller contacts; main operating contactors and switches.
  - Inspect door operator and clean parts, adjust safety edge, light ray and cables.
  - Clean and adjust proximity devices on door.
  - Clean all equipment and surrounding area.
  - Fill out and record maintenance checklist.
  
- On an annual basis, M&O staff should:
  - Have the equipment inspected by a certified inspector.
  - File an inspection report from the inspector evidencing that all equipment in a building on the real property was inspected in accordance with local ordinances.
  - When an inspection report is filed, the owner shall maintain verification that any deficiencies in the inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into.
  - Display the certificate of compliance in a publicly visible area of the building.
  - A certified inspector shall conduct a relief pressure test and any other service, repair, maintenance sufficient to ensure the safe operation of the elevator.

### **Interior Finishes (Common Areas)**

#### **Floors**

- Floor coverings which include ceramic tile, finished wood flooring, stained concrete and carpeting, should be maintained as recommended by the product manufacturer.
- Transitions from surfaces should be maintained level and smooth to prevent trips and falls.

#### **Walls and Ceilings**

- Walls and ceilings should be inspected for cracks in interior finishes. The amount of movement should be noted so that it can be monitored in the future.
- Bulges in wall and ceiling surfaces should be carefully monitored. Separated plaster, particularly on ceilings, can fall and cause injury.
- Walls, particularly in corners and areas of dead air (behind drapes for example), should be checked for evidence of condensation and mildew indicating high humidity levels within the building.
- Water stains on interior finishes should be noted. If the source cannot be detected, they should be monitored.
- Door frames should be inspected.
- Door frames which become out of square during a relatively short period (six months) may indicate structural problems.
- Condensation on windows indicates high humidity levels during winter months. This can sometimes lead to rot.

#### **Paint - Wall and Ceiling**

- Only experienced contractors should be used for interior paint application.
- All precautions to prevent health hazards to the residents and staff must be taken.
- Proper ventilation is always required.

- Paints and solvents shall be stored away from all residents' areas and disposed of properly. Proper ventilation should be utilized during painting operation.

### **Landscaping/Grounds\***

Grounds maintenance is very crucial to the public perception of a facility. Daily inspections and trash pick up with scheduled mowing is the first step in maintaining the appearance of the facility. Plants allowed to grow too close to a building can create mold and mildew problems on exterior wall surfaces. This could lead to indoor air quality problems within the building. Proper drainage should be provided to prevent water from ponding and erosion from occurring around the buildings. Fencing and gates should be maintained in good condition at all times to discourage unauthorized access and prevent injuries.

### **Landscaping\***

#### **Ground Cover/Grass**

- Monitor grass condition and moisture levels when mowing to determine if aerating, nutrients or other measures are needed.
- Conduct spot treatments when applying chemicals. Apply fertilizer only to areas that need it to prevent weeds.
- Use proper working equipment and safety gear for protection.

#### **Trees\***

- Do not use excess chemicals such as fertilizers to prevent pollution caused by seeping into the soil. Apply fertilizer and other chemicals only to areas that need it.
- Schedule fertilizer applications according to climate, location and plant species.
- Properly irrigate trees by following tree watering guidelines.
- Schedule frequent pruning to maximize plant health.
- Keep leaves, grass clippings and other ornamental wastes cleared off the sidewalks and streets so they do not wash into the storm drains and ultimately into streams and ponds. Power blowers should be used to blow clippings onto grass, not into the gutter.
- Physically pull weed out by hand, digging or cultivations, before resorting to chemical use.
- Never top trees.
- Tree limbs overhanging the building should be cut back. Dead limbs should be removed. Vines should be trimmed back from all exterior building surfaces.

#### **Ornamentals\***

- Do not use excess chemicals, such as fertilizers to prevent pollution caused by seeping into the soil. Apply fertilizer and other chemicals only to areas that need it.
- Maintain a buffer zone along waterways where chemicals are not applied in accordance with product labels; local ordinances and state and federal regulations to keep chemicals out of surface water bodies.
- Frequent pruning of ornamentals is key to maximizing plant health. It is important to establish a regular ornamental care schedule to promote healthy and lush plants, shrubs, trees and flowers. Prune as needed according to specific design and species of landscape.

**\*To the extent applicable**

- Keep leaves, grass clippings and other ornamental wastes cleared off the sidewalks and streets so they do not wash into storm drains and ultimately into streams and ponds. Power blowers should be used to blow clippings onto grass, not into the gutter.

### **Hardscape\***

- Sidewalks, driveways, parking areas and other paved areas shall be inspected monthly.
- Clean and fill cracks and expansion joints in concrete with a rubber asphalt sealant to prevent moisture from entering.
- Recommended fillers and sealant should be used to prevent moisture from entering surface. This will help prevent moisture from entering, extend the life of the concrete, and reduce costly repair and/or replacement.
- Surface areas should be level, free of holes and depressions and provide smooth transitions to all areas to prevent trip and fall hazards.
- Parking lots, handicap parking spaces, driveways, fire and emergency vehicle zones, and car loading/unloading areas should be marked with lettering, symbols, and striping as needed to provide information identifying these areas as such.
- Paint marking should be repainted as needed to maintain a good appearance and visibility.
- Sidewalks and other flatwork should be checked for cracks and deterioration. Settling which will result in surface water run off towards the building should be corrected as should uneven sections which pose a safety hazard to pedestrians.
- Inspect courtyard and hardscape once every day for hazardous materials, condition of equipment, all the while picking up litter that is found.
- Conduct daily inspections for graffiti and immediately submit request for removal.
- Hose areas where liquid materials have been spilled. Inspect landscape irrigation systems frequently to reduce water runoff and prevent hardscape damage.

### **Irrigation Systems**

- Perform equipment checkup and maintenance on a weekly basis, which includes checking equipment for damage, such as leaks or adjustments and then performing the adjustment or repair necessary.
- Perform in-depth inspections of irrigation systems after annual activation in the spring, and bring systems up to specified operating conditions.
- Prioritize future irrigation system improvements by maintaining a record of repairs that are needed, especially for large irrigation systems.
- Hire a certified landscape irrigation auditor at least once every five years to conduct a thorough and comprehensive efficiency check for properties that are one acre or larger. Look for signs of leakage, such as overgrown or particularly green turf areas, soggy areas around spray heads and aboveground hoses, jammed spray heads and torn hoses.
- If irrigation water runs onto hardscape, such as sidewalks, streets or driveways, immediately shutoff irrigation systems and adjust.
- Perform regular and annual inspections of system components to confirm that equipment and equipment components meet the original criteria for efficient operation and uniform distribution of water.

**\*To the extent applicable**

### **Pest Management - Outdoors**

- Regularly monitor pest populations and relevant factors that contribute to pests.
- Accurately identify pests that have been discovered.
- Implement spot treatments of low risk chemicals as needed to minimize human exposure and costs.
- Evaluate effectiveness of treatments to improve future actions.
- Educate all people involved with the pest problem.
- Focus on preventive pest management methodologies such as exclusion, sanitation and habitat modification.
- Use pesticides only as a last resort. Select products that are low risk to human health, as children are particularly vulnerable to pesticides.
- Choose chemicals that do not disrupt the settings of your landscape by killing non-target organisms and natural enemies that aid in pest control.

### **Swimming Pool and Spa**

#### **General Notes**

- As with any special equipment, spas need to be operated properly and safely.
- You should try to secure a copy of the manufacturer's operating instructions in order to understand fully the way this equipment functions and the safety precautions one should follow.
- On a weekly basis, M&O staff (or qualified technician) should:
  - Clean strainer basket.
  - Backwash pool water filter.
  - Check and adjust chemical levels for swimmer safety and prolonged life of liner.
  - Check circulating pump for leaks and unusual noises.
  - Fill out maintenance report.
  - Check pool lighting.
  - Check pool safety equipment and signage with rules for pool use.
- On an annual basis, M&O staff (or qualified technician) should:
  - Check pool deck for cracks, spans, and deteriorated sealant. Make repairs as necessary.
  - Check liner for, cracks, spans, pin-holing plaster and other deterioration. Make repairs as necessary.
- Every 6 years, M&O staff should:
  - Expect replacement of mechanical equipment (pumps, filters, heaters, etc.).

### **Cold Weather Issues**

#### **Parking Lot**

- When ice accumulation occurs on pavement and flatwork, M&O staff (or qualified technician) should:
  - Schedule removal to accommodate staff and residents.



- Make sure sufficient lighting is available for removal crews.
- Use equipment lighting in combination with parking lot lighting. Signs should be posted indicating any dangerous slopes or other icy conditions
- Use sand, salt and other de-icers as needed in parking lots, paying attention to temperature, moisture and time of day, which can all impact effectiveness.

### **Walkways/Doorways**

- When ice accumulation occurs on pavement and flatwork, M&O staff (or qualified technician) should:
  - Schedule removal to accommodate staff and residents.
  - Clear doors and thresholds often.
  - Mark paths and walkways for sensitive areas and potential hazardous conditions.
  - Sand and deice walkways and doorways to prevent any injury to staff and residents entering and exiting the building.
  - Consider melt mats to keep heavily trafficked areas free of ice.

### **Roofs**

- Train staff on equipment and safety procedures for roof snow removal.
- Use shovels with plastic blades as a first resort to clear space along the roof perimeter for additional staff and equipment.
- Protect windows, landscaping and staff on the ground from falling snow due to roof removal operations.
- Be sure to mark roof jacks, vent pies, exhausts and intakes, antennas, weather vanes and satellites that may become buried by snow.
- Investigate all roof edges from the ground each morning for cornices and remove them if needed.
- Consider heat tapes and melt mats to keep roof eaves, overhangs, gutters and downspouts free of ice.

### **Winterizing Building\***

- When temperatures are predicted to drop below the freezing level, M&O staff (or qualified technician) should:
  - Winterize valves and exterior faucets by whatever means appropriate for the situation.
  - Install markers where necessary.
  - Procure and store de-icers in appropriate locations.
  - Inspect, adjust and test heating systems to assure optimal operation when needed.

### **Winterizing Fields and Grounds\***

- When temperatures are predicted to drop below the freezing level, M&O staff (or qualified technician) should:
  - Prepare sprinkler system, pump station equipment, and plumbing for freezing temperatures.
  - Cover or store landscaping items that cannot withstand severe temperatures until conditions improve.

<b>*To the extent applicable</b>
----------------------------------

**Sample Item Checklist**

Components		M	Q	SA	A

**Typical Lives of Replaceable Components (to the extent applicable)**

Component	Estimated Useful Life
Carpet	5 to 7 years
Ceramic Tile	30 to 34 years
Wood Flooring	5 to 30 years
Mail boxes, built in wall	15 to 20 years
Paint, interior	5 to 8 years
Wallpaper	10 to 13 years
Wood doors	0 to 22 years
Elevator cab interior	15 years
Elevator mechanical	0 years
Controllers	6 to 8 years
Package heating and cooling	13 years
Plumbing fixtures	0 to 25 years
Water heaters	10 years
Pumps, motors, controls - plumbing	Up to 7 years
Light fixtures	10 to 14 years
Sprinkler and fire. protection systems	3 to 26 years
Security access systems	10 to 15 years
Emergency and exit lighting	8 to 12 years
Composition shingle roofing	12 years
Metal roofing	0 to 30 years
Masonry facade, minor repair	8 to 11 years
Masonry facade, major repair	5 to 30 years
Caulking, replacement	8 to 10 years
Window Systems, metal	16 to 23 years
Concrete sidewalks	16 to 20 years
Irrigation system	18, to 22 years
Irrigation controllers	9 to 11 years
Swimming Pool, refinish	7 years
Swimming pool, mech. equipment	Up to 6 years
Underground sewer & water lines	5 to 28 years

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Daigle*

2006 JUN 05 09:42 AM 2006037224  
JOHN\_S \$340.00  
Mary Ann Daigle ,COUNTY CLERK  
GALVESTON, TEXAS

**First Amendment to Condominium Declaration**

STATE OF TEXAS                   §  
                                                  §  
COUNTY OF GALVESTON       §

KNOW ALL MEN BY THESE PRESENTS:

This First Amendment to Condominium Declaration for Eibands Luxury Condominiums (“First Amendment”) is made as of this 12<sup>th</sup> day of July, 2006, by Gal Gate, LP, a Texas limited partnership (hereinafter sometimes referred to as “Declarant”).

**RECITALS**

A. Declarant is the successor-by-conversion to Gal Gate, LLC, a Texas limited liability company (“Original Declarant”), the original Declarant under that certain Condominium Declaration for Eibands Luxury Condominiums (“Declaration”) recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk’s File No. 2006037224.

B. Declarant has succeeded to the interests of the Original Declarant under the Declaration pursuant to the Plan of Conversion of Gal Gate, LLC, into Gal Gate, LP.

C. Declarant desires to amend the Declaration.

NOW, THEREFORE, Declarant, the sole Owner of any Units comprising the “Condominium” (as defined in the Declaration), hereby amends the Declaration as follows:

1. Section 3.2 of the Declaration is hereby amended to read as follows:

**Leases.** Units, Parking Spaces and Storage Spaces may be leased; however: (i) no lease shall be made for transient or hotel purposes, or for a term of less than six (6) months, provided that such six (6) month lease restriction shall not apply to leases within the “Retail Unit” (as defined in the Declaration); (ii) such lease shall be in writing, shall state that it is subject in all respects to the provisions of the Governing Documents and shall provide that any failure by the Tenant thereunder to comply with the terms and provisions of Governing Documents shall constitute a default under such lease; (iii) each lease shall be subject to leasing restrictions set forth by the Association in the Governing Documents, provided that the provisions of this item (iii) shall not apply to leases of the Retail Unit; (iv) an executed copy of each lease shall be submitted to the Association promptly following execution, provided that leases of the Retail Unit shall only be provided to the Association upon written request; and (v) all leases shall be on forms approved by the Association, except for leases of space within the Retail Unit. Parking Spaces and Storage Spaces may be leased only to an Owner or to a Tenant.

2. With respect to Section 3.8 (i), the Retail Unit shall be entitled to place a sign on the Building subject to the prior written approval of the Declarant, which approval shall not be unreasonably withheld.

3. All references in the Declaration to the square footage of the Retail Unit comprising "9,676 square feet" shall be amended to read "9,455 square feet."

4. The third grammatical sentence in Section 7.1(b) shall be replaced by the following sentences:

By way of example, the Owner of the Retail Unit shall not be obligated to pay Monthly Assessments with respect to the expenses of the Association allocable to the lobby, elevators (including any maintenance thereof), swimming pool, exercise room, parking spaces for the Owners of the other Units, any other Common Elements (including Limited Common Elements), security and dumpster/trash pickup. Any Assessments for roof and exterior painting payable by the Owner of the Retail Unit will be handled by Special Assessment, if necessary. The Monthly Assessments payable by the Owner of the Retail Unit shall increase by no more than 5% per annum, exclusive of any increases attributable to increases in insurance and property taxes.

5. Exhibit "C" attached to the Declaration shall be replaced by Exhibit "C" attached to this First Amendment. The initial estimated Monthly Assessment for the Retail Unit shall be \$686.89.

6. That Enterprise Bank, a state bank, and Caddo East Estates I, Ltd., a Texas limited partnership, the holders of liens against the "Property" (as defined in the Declaration), are joining in the execution of this First Amendment pursuant to the Consent And Subordination attached hereto and made part hereof for all purposes.

Except as amended by this First Amendment, the Declaration remains unchanged and continues in full force and effect.

**Declarant:**

Gal Gate, LP, a Texas limited partnership

By: Gal Gate GP, LLC, a Texas limited liability company

By:   
Jerome M. Karam, President

STATE OF TEXAS

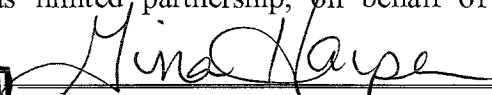
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COUNTY OF GALVESTON

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This instrument was acknowledged before me on the 12 day of July, 2006, by Jerome M. Karam, President of Gal Gate GP, LLC., a Texas limited liability company, general partner of Gal Gate, LP, a Texas limited partnership, on behalf of such limited partnership.



(SEAL)



Notary Public in and for the State of Texas

✓ Return to:  
Jerome Karam  
353 E. Parkwood  
Friendswood TX 77546

**CONSENT AND SUBORDINATION**

The undersigned, beneficiary under a Deed of Trust ("Deed of Trust") dated as of July 22, 2005 and recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2005056705 hereby approves that certain Condominium Declaration for Eibands Luxury Condominiums (the "Declaration"), recorded in the Official Public Records of Real Property of Galveston County, Texas under Clerk's File No. 2006037224, as amended by the First Amendment to Condominium Declaration ("First Amendment") to which this Consent And Subordination is attached, and agrees that the Deed of Trust is, and shall at all times continue to be, subject, inferior and subordinate in all respects to the Declaration, as amended by the First Amendment.

Dated: July 13, 2006.

Enterprise Bank, a state bank

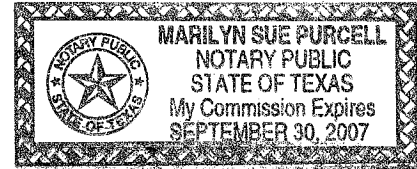
By: Michael J. Peery  
Name: Michael J. Peery  
Title: Sr. Vice President

STATE OF TEXAS §  
COUNTY OF Harris §

This instrument was acknowledged before me on this 13 day of July, 2006, by \_\_\_\_\_, Michael J. Peery of Enterprise Bank, a state bank, on behalf of said bank. Sr. Vice President

Marilyn Sue Purcell  
Notary Public - State of Texas

My Commission Expires: 9-30-07



**CONSENT AND SUBORDINATION**

The undersigned, beneficiary under a Deed of Trust ("Deed of Trust") dated as of January 26, 2005, and recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2005006052 hereby approves that certain Condominium Declaration for Eibands Luxury Condominiums (the "Declaration"), recorded in the Official Public Records of Real Property of Galveston County, Texas under Clerk's File No. 2006037224, as amended by the First Amendment to Condominium Declaration ("First Amendment") to which this Consent And Subordination is attached, and agrees that the Deed of Trust is, and shall at all times continue to be, subject, inferior and subordinate in all respects to the Declaration, as amended by the First Amendment.

Dated: July 17, 2006.

Caddo East Estates I, Ltd., a Texas limited partnership

By: Caddo East Estates, L.L.C., a Texas limited liability company,  
its general partner

By: Kevin Schuler  
Name: Kevin Schuler  
Title: Vice President

STATE OF TEXAS                   §  
                                                  §  
COUNTY OF Collin           §

This instrument was acknowledged before me on this 17<sup>th</sup> day of July, 2006, by Kevin Schuler, Vice President of Caddo East Estates, L.L.C., a Texas limited liability company, general partner of Caddo East Estates I, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Ellen Darr  
Notary Public - State of Texas

My Commission Expires:  
10/27/07





**EXHIBIT "C"**

**ALLOCATED INTERESTS**

<b>UNIT</b>	<b>SQUARE FOOTAGE</b>	<b>PERCENTAGE OF OWNERSHIP</b>	<b>ESTIMATED MONTHLY ASSESSMENT</b>
Common Area	9778	15.91%	
201	2157	3.51%	\$431.40
202	1526	2.48%	\$305.20
203	1851	3.01%	\$370.20
204	1562	2.54%	\$312.40
205	1594	2.59%	\$318.80
206	1965	3.20%	\$393.00
207	1694	2.76%	\$338.80
208	1689	2.75%	\$337.80
309	1841	3.00%	\$368.20
310	1526	2.48%	\$305.20
311	1851	3.01%	\$370.20
312	1562	2.54%	\$312.40
313	1594	2.59%	\$318.80
314	1965	3.20%	\$393.00
315	1707	2.78%	\$341.40
316	2039	3.32%	\$407.80
417	1841	3.00%	\$368.20
418	1526	2.48%	\$305.20
419	1851	3.01%	\$370.20
420	1562	2.54%	\$312.40
421	1594	2.59%	\$318.80
422	1965	3.20%	\$393.00
423	1707	2.78%	\$341.40
424	2038	3.32%	\$407.60
<b>Retail Unit</b>	<b>9455</b>	<b>15.39%</b>	<b>\$686.89</b>
<b>TOTAL:</b>	<b>61440</b>	<b>100%</b>	<b>\$9128.29</b>

**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Daigle*

2006 JUL 18 11:49 AM 2006047744  
LILLY \$36.00  
Mary Ann Daigle, COUNTY CLERK  
GALVESTON, TEXAS

**Second Amendment to Condominium Declaration**

STATE OF TEXAS                   §  
                                           §  
 COUNTY OF GALVESTON       §

KNOW ALL MEN BY THESE PRESENTS:

This Second Amendment to Condominium Declaration for Eibands Luxury Condominiums ("Second Amendment") is made as of this 19 day of September, 2006, by Gal Gate, LP, a Texas limited partnership (hereinafter sometimes referred to as "Declarant"), by Lone Pine Properties, Ltd., a Texas limited partnership (hereinafter referred to as "Lone Pine"), by Kent B. Ballard and Ronald F. Plackemeier (hereinafter referred to as "Ballard-Plack"), and by Peter J. Thrasher (hereinafter referred to as "Thrasher").

RECITALS

A. Declarant is the successor-by-conversion to Gal Gate, LLC, a Texas limited liability company ("Original Declarant"), the original Declarant under that certain Condominium Declaration for Eibands Luxury Condominiums recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, as amended by that certain First Amendment to Condominium Declaration dated as of July 12, 2006, recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006047744 (said Declaration, as amended by said First Amendment to Condominium Declaration, are hereinafter collectively referred to as the "Declaration").

B. Declarant has succeeded to the interests of the Original Declarant under the Declaration pursuant to the Plan of Conversion of Gal Gate, LLC, into Gal Gate, LP.

C. Declarant is the owner of all of the Units, except for the Retail Unit which is owned by Lone Pine Properties, Unit 201 which is owned by Ballard-Plack, and Unit 208 which is owned by Thrasher, the sole other owners of Units.

D. Declarant, Lone Pine, Ballard-Plack, and Thrasher desire to amend the Declaration.

E. Declarant, Lone Pine, Ballard-Plack, and Thrasher, pursuant to Section 12.3 of the Declaration, have the right to amend the Declaration.

F. All capitalized terms used in the Second Amendment shall have the same respective meaning ascribed to such terms in the Declaration, except as otherwise defined herein.

NOW, THEREFORE, Declarant, Lone Pine, Ballard-Plack, and Thrasher, hereby amend the Declaration as follows:

1. Pursuant to the definition of "Limited Common Elements" in Section 1.1 of the Declaration, the Declarant hereby designates which of the Parking Spaces and Storage Spaces shall be Limited Common Elements for the exclusive use of the Unit Owner of the Unit to which they are hereby assigned pursuant to the designations made in (a) Exhibit "A-2" relating to the Parking Spaces described in Exhibit "A-1" and (b) Exhibit "B-2" relating to the Storage Spaces described in Exhibit "B-1", respectively, all of which exhibits are attached hereto and made part hereof for all purposes.

2. The Enterprise Bank, a state bank, and Caddo East Estates I, Ltd., a Texas limited partnership, Mainland Bank, Texas First Bank – LaMarque, and First Community Bank The Woodlands, National Association, the holders of liens against the Property, are joining in the execution of this Second Amendment pursuant to the Consent And Subordination attached hereto and made part hereof for all purposes.

Except as amended by this Second Amendment, the Declaration remains unchanged and continues in full force and effect.

**Declarant:**

Gal Gate, LP, a Texas limited partnership

By: Gal Gate GP, LLC, a Texas limited liability company,  
its general partner

By:   
Jerome M. Karam, President

**Other Owner:**

Lone Pine Properties, Ltd., a Texas limited partnership

By: Lone Pine Properties, Ltd., a Texas limited partnership,  
its general partner

By: \_\_\_\_\_  
Jacque Passino, Jr., Sole Member

1. Pursuant to the definition of "Limited Common Elements" in Section 1.1 of the Declaration, the Declarant hereby designates which of the Parking Spaces and Storage Spaces shall be Limited Common Elements for the exclusive use of the Unit Owner of the Unit to which they are hereby assigned pursuant to the designations made in (a) Exhibit "A-2" relating to the Parking Spaces described in Exhibit "A-1" and (b) Exhibit "B-2" relating to the Storage Spaces described in Exhibit "B-1", respectively, all of which exhibits are attached hereto and made part hereof for all purposes.

2. The Enterprise Bank, a state bank, and Caddo East Estates I, Ltd., a Texas limited partnership, Mainland Bank, Texas First Bank – LaMarque, and First Community Bank The Woodlands, National Association, the holders of liens against the Property, are joining in the execution of this Second Amendment pursuant to the Consent And Subordination attached hereto and made part hereof for all purposes.

Except as amended by this Second Amendment, the Declaration remains unchanged and continues in full force and effect.

**Declarant:**

Gal Gate, LP, a Texas limited partnership


By: Gal Gate GP, LLC, a Texas limited liability company,  
its general partner

By:   
Jerome M. Karam, President

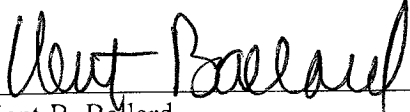
**Other Owner:**

Lone Pine Properties, Ltd., a Texas limited partnership

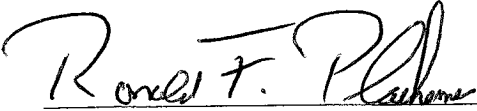
By: Lone Pine Properties, Ltd., a Texas limited partnership,  
its general partner

By:   
Jacques Passino, Jr., Sole Member

**Other Owners:**

  
\_\_\_\_\_

Kent B. Ballard

  
\_\_\_\_\_


Ronald F. Plackemeier

\_\_\_\_\_  
Peter J. Thrasher

**Other Owners:**

\_\_\_\_\_  
Kent B. Ballard

\_\_\_\_\_  
Ronald F. Plackemeier

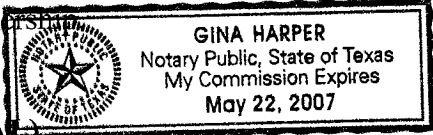
  
\_\_\_\_\_  
Peter J. Thrasher

STATE OF TEXAS

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COUNTY OF GALVESTON

This instrument was acknowledged before me on the 19 day of September, 2006, by Jerome M. Karam, President of Gal Gate GP, LLC., a Texas limited liability company, general partner of Gal Gate, LP, a Texas limited partnership, on behalf of such limited partner.



*Gina Harper*  
Notary Public in and for the State of Texas

(SEAL)

STATE OF TEXAS

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§

COUNTY OF GALVESTON

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Jacque Passino, Jr., sole member of Lone Pine Associates, LLC., a Texas limited liability company, general partner of Lone Pine Properties, Ltd., a Texas limited partnership, on behalf of such limited partnership.

\_\_\_\_\_  
Notary Public in and for the State of Texas

(SEAL)

STATE OF TEXAS

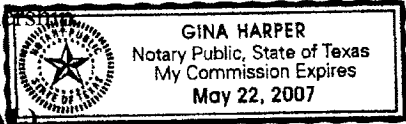
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COUNTY OF GALVESTON

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This instrument was acknowledged before me on the 19 day of September, 2006, by Jerome M. Karam, President of Gal Gate GP, LLC., a Texas limited liability company, general partner of Gal Gate, LP, a Texas limited partnership, on behalf of such limited partnership.



(SEAL)

*Gina Harper*  
Notary Public in and for the State of Texas

STATE OF TEXAS

§

COUNTY OF GALVESTON

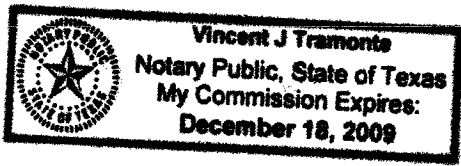
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This instrument was acknowledged before me on the 2 day of OCTOBER, 2006, by Jacque Passino, Jr., sole member of Lone Pine Associates, LLC., a Texas limited liability company, general partner of Lone Pine Properties, Ltd., a Texas limited partnership, on behalf of such limited partnership.

(SEAL)

*Vincent J. Tramonte*  
Notary Public in and for the State of Texas



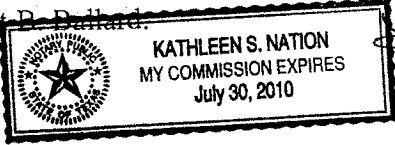


STATE OF TEXAS

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COUNTY OF GALVESTON

This instrument was acknowledged before me on the 22<sup>nd</sup> day of September, 2006, by Kent B. Ballard.



Kathleen S. Nation  
Notary Public in and for the State of Texas

(SEAL)

STATE OF TEXAS

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§

COUNTY OF GALVESTON

This instrument was acknowledged before me on the 22<sup>nd</sup> day of September, 2006, by Ronald F. Plackemeier.



Kathleen S. Nation  
Notary Public in and for the State of Texas

(SEAL)

STATE OF TEXAS

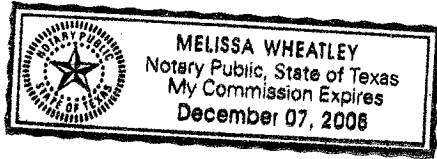
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COUNTY OF GALVESTON

This instrument was acknowledged before me on the 21st day of Sept.,  
2006, by Peter J. Thrasher.

*Melissa Wheatley*  
\_\_\_\_\_  
Notary Public in and for the State of Texas

(SEAL)



**CONSENT AND SUBORDINATION**

The undersigned, beneficiary under a Deed of Trust ("Deed of Trust") dated as of July 22, 2005 and recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2005056705 hereby approves that certain Condominium Declaration for Eibands Luxury Condominiums (the "Declaration"), recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, as amended by the First Amendment to Condominium Declaration ("First Amendment"), recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006047744, as further amended by this Second Amendment to Condominium Declaration ("Second Amendment") to which this Consent And Subordination is attached, and agrees that the Deed of Trust is, and shall at all times continue to be, subject, inferior and subordinate in all respects to the Declaration, as amended by the First Amendment and Second Amendment.

Dated: September 15, 2006.

Enterprise Bank, a state bank

By:

Name:

Title:

*Michael J. Peery*  
**Michael J. Peery**  
**Sr. Vice President**

STATE OF TEXAS

§

COUNTY OF Harris

§

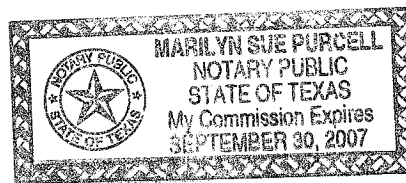
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This instrument was acknowledged before me on this 15th day of September, 2006, by MICHAEL J. PEERY, SR. VICE PRESIDENT of Enterprise Bank, a state bank, on behalf of said bank.

*Marilyn Sue Purcell*  
Notary Public - State of Texas

My Commission Expires:

9-30-07



CONSENT AND SUBORDINATION

The undersigned, beneficiary under a Deed of Trust ("Deed of Trust") dated as of January 26, 2005, and recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2005006052 hereby approves that certain Condominium Declaration for Eibands Luxury Condominiums (the "Declaration"), recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, as amended by the First Amendment to Condominium Declaration ("First Amendment") recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006047744, as further amended by this Second Amendment to Condominium Declaration ("Second Amendment") to which this Consent And Subordination is attached, and agrees that the Deed of Trust is, and shall at all times continue to be, subject, inferior and subordinate in all respects to the Declaration, as amended by the First Amendment and Second Amendment.

Dated: September 25, 2006.

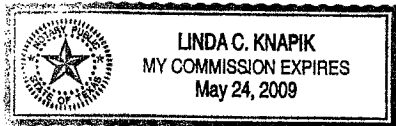
Caddo East Estates I, Ltd., a Texas limited partnership

By: Caddo East Estates, L.L.C., a Texas limited liability company, its general partner

By: Kevin Schuler  
Name: Kevin Schuler  
Title: Vice President

STATE OF TEXAS                   §  
                                                 §  
COUNTY OF Collin           §

This instrument was acknowledged before me on this 25<sup>th</sup> day of September, 2006, by Kevin Schuler, Vice President of Caddo East Estates, L.L.C., a Texas limited liability company, general partner of Caddo East Estates I, Ltd., a Texas limited partnership, on behalf of said limited partnership.



Linda C Knapik  
Notary Public - State of Texas

My Commission Expires: 5/24/09

CONSENT AND SUBORDINATION

24th The undersigned, beneficiary under a Deed of Trust ("Deed of Trust") dated as of July 2006, and recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006050068 hereby approves that certain Condominium Declaration for Eibands Luxury Condominiums (the "Declaration"), recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, as amended by the First Amendment to Condominium Declaration ("First Amendment") recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006047744, as further amended by this Second Amendment to Condominium Declaration ("Second Amendment") to which this Consent And Subordination is attached, and agrees that the Deed of Trust is, and shall at all times continue to be, subject, inferior and subordinate in all respects to the Declaration, as amended by the First Amendment and Second Amendment.

Dated: September 22nd, 2006.

Mainland Bank

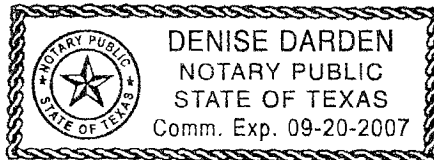
By: [Signature]  
Name: JJ Stanford  
Title: Chief Credit Officer

STATE OF TEXAS           §  
                                          §  
COUNTY OF Galveston   §

This instrument was acknowledged before me on this 22nd day of September, 2006, by JJ Stanford, Chief Credit Officer of Mainland Bank, on behalf of said bank.

[Signature]  
Notary Public - State of Texas

My Commission Expires:  
9/20/07



CONSENT AND SUBORDINATION

The undersigned, beneficiary under a Deed of Trust ("Deed of Trust") dated as of September \_\_, 2006, and recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. \_\_\_\_\_ hereby approves that certain Condominium Declaration for Eibands Luxury Condominiums (the "Declaration"), recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, as amended by the First Amendment to Condominium Declaration ("First Amendment") recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006047744, as further amended by this Second Amendment to Condominium Declaration ("Second Amendment") to which this Consent And Subordination is attached, and agrees that the Deed of Trust is, and shall at all times continue to be, subject, inferior and subordinate in all respects to the Declaration, as amended by the First Amendment and Second Amendment.

Dated: September 21<sup>st</sup>, 2006.

Texas First Bank - LaMarque

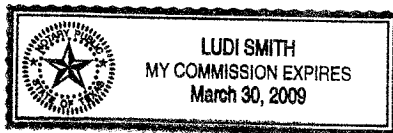
By [Signature]  
Name: James A. Torres  
Title: VICE PRESIDENT

STATE OF TEXAS §  
COUNTY OF Galveston §

This instrument was acknowledged before me on this 21<sup>st</sup> day of September, 2006, by James A. Torres, Vice-President of Texas First Bank - LaMarque, on behalf of said bank.

[Signature]  
Notary Public - State of Texas

My Commission Expires: 3/30/09



**CONSENT AND SUBORDINATION**

The undersigned, beneficiary under a Deed of Trust ("Deed of Trust") dated as of September 21, 2006, and recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. \_\_\_\_\_ hereby approves that certain Condominium Declaration for Eibands Luxury Condominiums (the "Declaration"), recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, as amended by the First Amendment to Condominium Declaration ("First Amendment") recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006047744, as further amended by this Second Amendment to Condominium Declaration ("Second Amendment") to which this Consent And Subordination is attached, and agrees that the Deed of Trust is, and shall at all times continue to be, subject, inferior and subordinate in all respects to the Declaration, as amended by the First Amendment and Second Amendment.

Dated: September 26, 2006.

First Community Bank The Woodlands, National Association

By: [Signature]  
Name: David S. McIver  
Title: Sr. V. P.

STATE OF TEXAS                    §  
                                                  §  
COUNTY OF Harris            §

This instrument was acknowledged before me on this 26 day of September, 2006, by David S. McIver, Sr. Vice President of First Community Bank The Woodlands, National Association, on behalf of said bank.

[Signature]  
Notary Public - State of Texas

My Commission Expires:  
2-15-2010

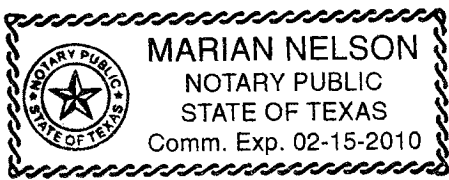
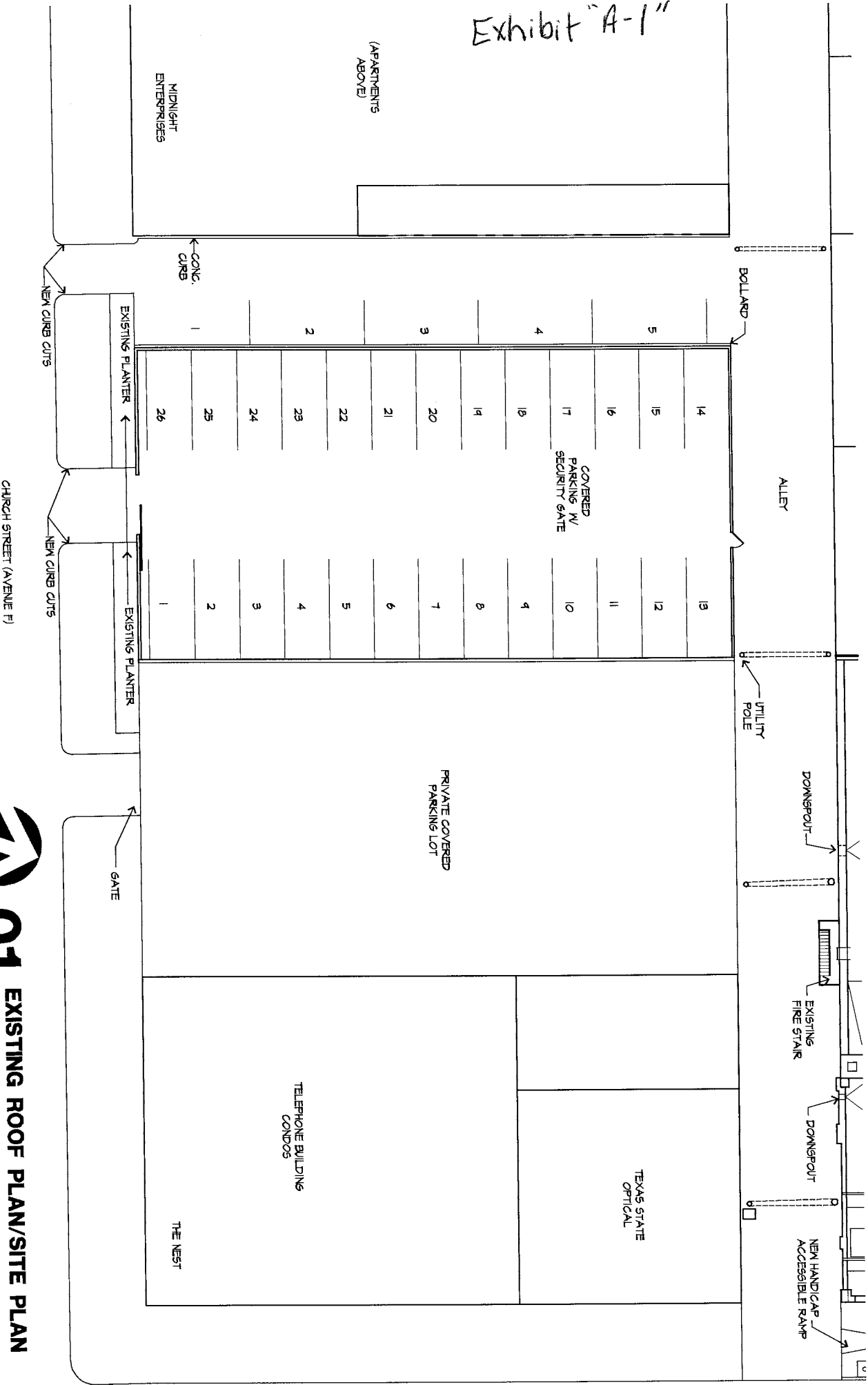


Exhibit "A-1"

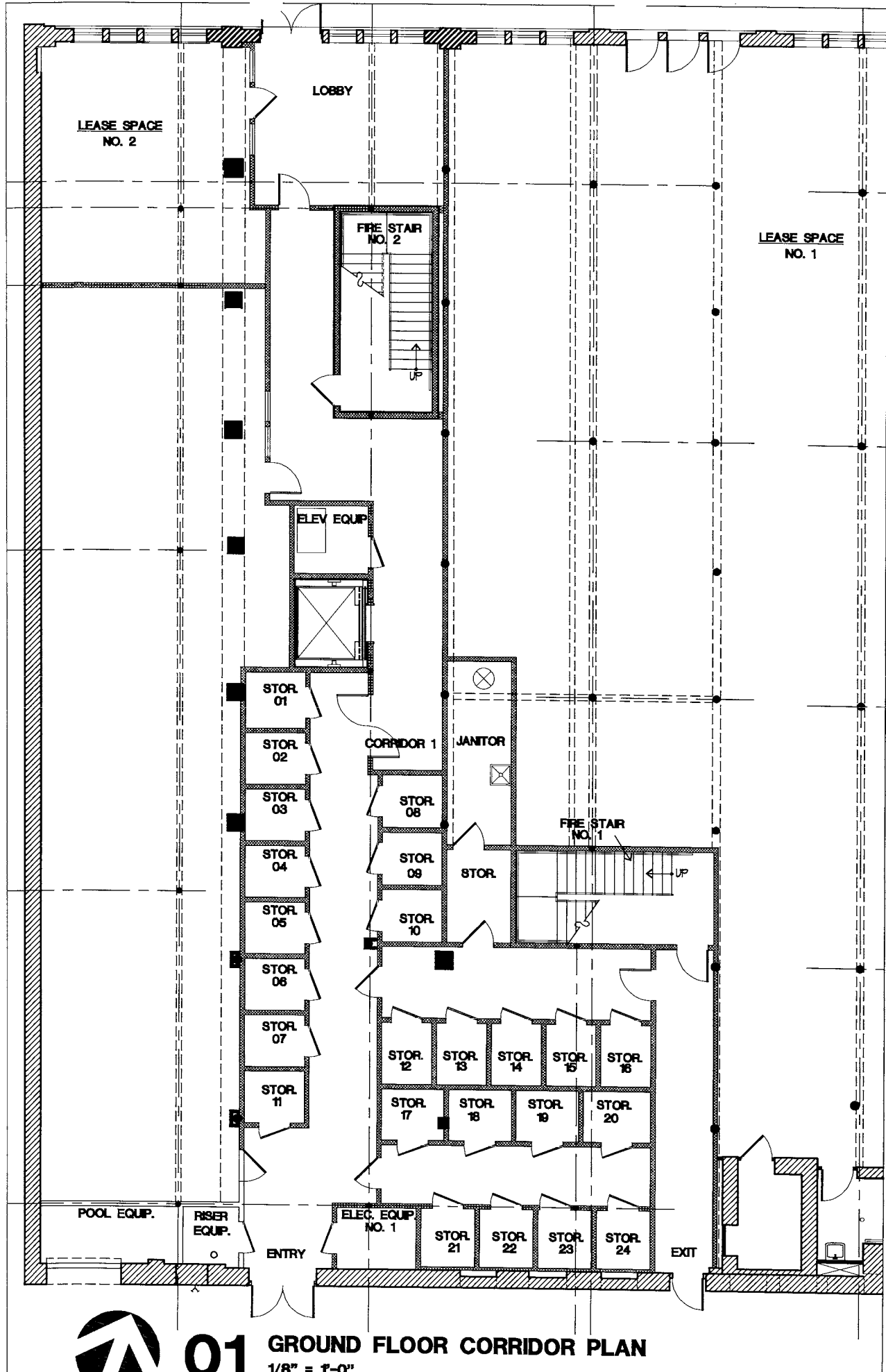




**EXHIBIT "A-2"**

<b>Parking Spaces Inside the Gate</b>	<b>Assigned to Unit</b>
1	424
2	422
3	420
4	418
5	316
6	314
7	312
8	310
9	208
10	206
11	204
12	202
13	201
14	201
15	203
16	205
17	207
18	309
19	311
20	313
21	315
22	417
23	419
24	421
25	423
26	201
<b>Parking Spaces Outside the Gate</b>	<b>Assigned to Unit</b>
1 - 5	Retail Unit

Exhibit "B-1"



01

GROUND FLOOR CORRIDOR PLAN

1/8" = 1'-0"

**EXHIBIT "B-2"**

Ground Floor Storage Space	Assigned to Unit
01	201
02	202
03	203
04	204
05	205
06	206
07	207
08	208
09	309
10	310
11	311
12	312
13	313
14	314
15	315
16	316
17	417
18	418
19	419
20	420
21	421
22	422
23	423
24	424

PAID

Jerome Karam  
353 E. Parkwood  
Friendswood TX 77546

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Daigle*

2006 OCT 06 09:39 AM 2006068444  
NAVARRO \$84.00  
Mary Ann Daigle, COUNTY CLERK  
GALVESTON, TEXAS

RECORDED COPY OF DEED FROM JEROME KARAM TO FRIENDSWOOD TX 77546

CALL 409-765-1111 FOR MORE INFORMATION  
OFFICE HOURS: 9:00 AM - 5:00 PM  
FRIEDLANDER COUNTY CLERK OFFICE  
1000 GULFVIEW DRIVE, GALVESTON, TEXAS 77550

**RESTATED AND AMENDED BYLAWS**  
**OF**  
**EIBANDS LUXURY CONDOMINIUM ASSOCIATION, INC.**

**RESTATED AND AMENDED  
BYLAWS OF EIBANDS LUXURY CONDOMINIUM ASSOCIATION, INC.**

These Restated and Amended Bylaws of Eibands Luxury Condominium Association, Inc. (“Restated Bylaws”) supersede, replace and amend the Eibands Luxury Condominium Association, Inc., Bylaws (“Original Bylaws”) adopted as of 5-9, 2006. In the event of any inconsistency between the terms and provisions of these Restated Bylaws and the Original Bylaws, the terms and conditions of these Restated Bylaws shall control. All references herein to the “Bylaws” of the Association shall mean and refer to these Restated Bylaws. These Restated Bylaws are adopted by Gal Gate, LP, a Texas limited partnership, the sole Member of the Association.

**ARTICLE I  
Name and Address**

**Section 1.1 Name.** The name of this Association shall be **EIBANDS LUXURY CONDOMINIUMS ASSOCIATION, INC.**

**Section 1.2 Address.** The office of the Association shall be at the place to be designated by the Board of Directors, subject to change upon notice to the Members of the Association.

**Section 1.3 Registered Agent.** The Association shall have and continuously maintain in the State of Texas a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical to the principal office in the State of Texas, and the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II  
Applicability**

These Bylaws shall be applicable to the Association. In accordance with the terms of the Declaration, all Members and any other Persons permitted to use the Common Elements shall be subject to these Bylaws and to any rules and regulations adopted from time to time by the Board of Directors. Ownership of any Unit, or rental or occupancy of any portion of a Unit in the Property shall be conclusively deemed to mean that the Tenant or occupant has accepted, ratified and will comply with the Governing Documents.

**ARTICLE III  
Purpose**

The purpose of the Association is to protect and enhance the value of the Property, including, without limitation, providing for the management of the Common Elements. The

Association does not contemplate pecuniary gain or profit to its Members as a result of membership in the Association.

#### **ARTICLE IV Definitions and Interpretation**

**Section 4.1 Definitions.** The following terms shall have the meanings set forth below. Any capitalized terms not expressly defined herein shall have the same meaning as defined in the Declaration.

"Act." The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.

"Association." Eibands Luxury Condominiums Association, Inc., a Texas non-profit Corporation for the purposes of Section 9.1 of these Bylaws, any domestic or foreign successor entity of the Association in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Association by operation of law and in any other transaction in which the Association assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of Article IX of these Bylaws.

"Board of Directors." Those individuals serving as Board of Directors pursuant to Article VII of these Bylaws and their successors as duly elected and qualified from time to time.

"Code." The Internal Revenue Code of 1986, as amended.

"Common Expenses." Expenses for which the Association is responsible, including: (i) the Expenses; (ii) those insurance coverages as may be maintained by the Association as described in the Declaration; (iii) professional services for the Association, such as management, accounting and legal services; and (iv) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation, management and administration of the Association and the Common Elements.

"Condominium." Eibands Luxury Condominiums, formed pursuant to the Declaration.

"County." Galveston County, Texas.

"Declarant Control." The period commencing on the date of the Declaration and continuing until one hundred twenty (120) days after the date that deeds to not less than 75% of the Units have been recorded in the real property records of the County, subject, however to the provisions of Section 10.2.

"Declaration." The Condominium Declaration for EIBANDS LUXURY CONDOMINIUMS dated June 1, 2006, recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, and all recorded amendments thereto, which shall be recorded in the real property records of the County.

"Director." A member of the Board of Directors, and for the purposes of Article IX of these Bylaws any individual who is or was a director of the Association and any individual who,

while a director of the Association, is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

"GAAP." Generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board.

"Governing Documents." Individually and collectively the Act, the Declaration, the Articles, the Bylaws, and the Rules and Regulations.

"Improvements." The Buildings and their infrastructure, and the pavement, fencing, landscaping, facilities, Systems, and man-made objects of every type, existing or in the future placed on the Property, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Lien Indebtedness." Any bona fide indebtedness, which is the result of an arm's-length negotiation secured by a lien or encumbrance upon an Owner's Unit.

"Majority Vote of the Members." Members in Good Standing holding, in the aggregate, a majority of the votes entitled to be cast by the Members in Good Standing present or voting by legitimate proxy at a called meeting at which a Quorum is present.

"Manager." Any experienced and professional manager or management company with whom the Association contracts for the day-to-day management of either or both of the Property or the administration of the Association and the Condominium.

"Member in Good Standing." Has the meaning set forth in the Articles.

"Members." All present and future Owners in the Condominium.

"Mortgagee." Any Person that is the holder, insurer or guarantor of Lien Indebtedness which has provided the Association with written notice of its name, address and the description of the Unit on which it holds Lien Indebtedness.

"Minute Book." The minute book of the Association, which shall contain the minutes of all annual and special meetings of the Members of the Association and the Board of Directors and all resolutions of the Board of Directors.

"Official Capacity." (i) when used with respect to a Director, the office of director in the Association, and (ii) when used with respect to a individual other than a Director, the elective or appointive office in the Association held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Association, but (iii) both (i) and (ii) above do not include service for any other foreign or domestic Association or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any



other legal entity, including any public or governmental body, agency or instrumentality and any fiduciary acting in such capacity on behalf of any of the foregoing.

"President." The officer of the Association having the duties described in Section 8.4 of these Bylaws.

"Proceeding." Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in such an action, suit, or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding.

"Property." The Units and the Common Elements.

"Quorum." Has the meaning set forth in Section 5.2 of these Bylaws.

"Reserve Fund." A fund to be maintained by the Association to meet unforeseen expenditures of the Association or to purchase any additional equipment or services deemed necessary by the Association for operation of the Condominium subject to the provisions of the Declaration.

"Rules and Regulations." The rules and regulations of the Association initially adopted by the Association and as restated and amended from time to time relating to the appearance, use, and occupancy of the Property, including exterior appearance, use and occupancy of the Units.

"Secretary." The officer of the Association having the duties described in Section 8.6 of these Bylaws.

"Treasurer." The officer of the Association having the duties described in Section 8.7 of these Bylaws.

"Unit." A physical portion of the Condominium that is designated for separate ownership or occupancy with the unrestricted right of ingress thereto and egress therefrom, together with an undivided interest, appurtenant to such Unit, in and to the Common Elements, and includes (i) all Systems which exclusively serve such Unit and (ii) the finish materials, fixtures and appliances contained in the Unit, but excludes (a) any of the Structure of the Building(s) in which such Unit is located and (b) Systems which serve more than one Unit, all as subject to and further described in Section 82.052 of the Act.

**Section 4.2 Interpretation.** In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. If the Code is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Code with respect to nonprofit entities, it being the intention to preserve the status of the Association as a *bona fide* nonprofit entity.

**ARTICLE V**  
**Member**

**Section 5.1 Membership.**

(a) Each Owner shall automatically be a Member of the Association. The voting rights and procedures are set forth in the Declaration.

(b) In cases where more than one Person owns an interest in a Unit, all such Persons shall arrange among themselves for one of their number to exercise the voting rights herein established. In no event shall there be more than one vote for any Unit. If only one of the Persons is present at a meeting of the Association, that Person may cast that Unit's vote. If more than one of the Persons is present and after one Person casts the vote, another Person present makes prompt protest to the Person presiding over the meeting, such vote shall not be counted unless such Persons can unanimously agree on such vote by the end of the meeting. Each Person owning a portion of the fee interest in a Unit may vote or register protest to the casting of votes by the other Persons owning portions of the fee interest in the same Unit through a proxy duly executed by such Member. A Member may not revoke a proxy except by giving actual written notice of revocation to the Person presiding over the meeting.

**Section 5.2 Affirmative Vote.** Members in Good Standing holding fifty percent (50%) of the aggregate votes entitled to be cast by the Members, represented at a meeting of the Members in person or by a legitimate proxy in a form approved by the Board of Directors, shall constitute a quorum for voting on matters brought before the Members at meetings called by the Board of Directors (a "Quorum"). The vote of the Majority Vote of the Members shall be the act of the Members. A vote may be cast either in person or by proxy, by Members in Good Standing. Notice and quorum requirements shall be as set forth herein. Cumulative voting shall not be permitted.

**Section 5.3 Membership List.** The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known addresses as provided by each Member. The list shall also show opposite each Member's name the address of the Unit owned. The list shall be revised by the Secretary to reflect changes in the ownership of the Units occurring prior to the date of the annual or special meeting. The list shall be open to inspection by all Members and other Persons lawfully entitled to inspect the list during regular business hours up to the date of the annual or special meeting. The Secretary shall also keep current and retain custody of the Minute Book. Membership of a Member in the Association shall automatically terminate when such Member ceases to be an Owner; provided, however, that such termination shall not release or relieve such Member from any liability or obligation under the Declaration that was incurred during such Member's period of ownership of a Unit.

**Section 5.4 Proxies.** Votes may be cast by written proxy or by ballot. Written proxies may be submitted by United States mail, delivered to the office of the Association, delivered directly to the Secretary or delivered in such other manner as directed by the Association. A proxy vote shall be defined as a written vote submitted by a Member which either states the specific vote of the Member with respect to the issues, resolutions or election being voted on by

the Members at the annual or special meeting or which is written permission for the Board of Directors or a specific Director to exercise the Member's vote as the Board of Directors or the specific Director sees fit. A proxy shall be valid for the meeting specified in the proxy or any valid continuation of such meeting. Each proxy shall be revocable unless otherwise expressly provided therein to be irrevocable. No proxy will be valid after 11 months from the date of its execution unless otherwise provided therein.

## **ARTICLE VI**

### **Meetings of the Members of the Association**

**Section 6.1 Place of Annual and Special Meetings.** All annual and special meetings of the Members of the Association shall be held at the principal office of the Association or at another suitable and convenient place permitted by law and fixed by the Board of Directors from time to time and designated in the notices of the meetings.

**Section 6.2 Date of Annual Meetings.** The first annual meeting of the Members of the Association shall be held within one year of its formation. Thereafter, annual meetings of the Members of the Association shall be held in January each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business that may properly come before the meeting.

**Section 6.3 Notice of Annual Meetings.** The Secretary shall mail notices of annual meetings to each Member directed to the most recent post office address provided to the Association by such Member, as shown on the records of the Association, by regular mail, postage prepaid. This notice shall be mailed not less than ten or more than 40 days before the date of the meeting and shall state the date, time and place of the meeting, the purpose or purposes thereof and the items on the agenda, including the specific nature of any proposed amendment or change to the Governing Documents.

**Section 6.4 Special Meeting.** A special meeting of the Members of the Association may be called by the President, a majority of the Directors, or upon presentation to the Secretary of a petition stating the specific purpose of the special meeting, which petition has been signed by Members having not less than twenty-five percent (25%) of the aggregate votes entitled to be cast at such meeting.

**Section 6.5 Notice of Special Meetings.** The Secretary shall mail notice of any special meeting of the Members of the Association to each Member in the manner provided in Section 6.3 of these Bylaws. The notice shall state the same items required by Section 6.3 of these Bylaws for notices of annual meetings. No business shall be transacted at any special meeting except as stated in the notice thereof.

**Section 6.6 Quorum.** At any duly convened meeting of the Members of the Association, a quorum shall be present if at least fifty percent (50%) of the Members in Good Standing are present in person or proxy at the beginning of the meeting.

**Section 6.7 Agenda.** The agenda at all meetings of the Members of the Association shall include: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) approval of the

minutes of the preceding meeting; (d) reports of officers and committees; (e) election of Directors, if applicable; (f) unfinished business; (g) new business; and (h) adjournment.

**Section 6.8 Action without Meeting by Written Ballot.** Any action which may be taken by the vote of the Members at a regular or special meeting, other than the election of Directors, may be taken without a meeting if done in compliance with relevant provisions of the Texas Non-Profit Corporation Act. If an action is taken without a meeting, the Board of Directors shall distribute a written ballot to every Member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the proposal at a regular or special meeting authorizing the action.

**Section 6.9 Administration of Affairs.** Subject to the provisions of the Governing Documents the Board of Directors shall govern the Association.

## **ARTICLE VII The Board of Directors**

### **Section 7.1 Authority; Number of Directors.**

(a) Except as is provided below, Declarant shall have the right to appoint and remove members of the Board of Directors during the period of Declarant Control. If Declarant voluntarily surrenders control prior to the termination of the period of Declarant Control, Declarant may require that specified actions of the Board of Directors be subject to Declarant approval until the expiration of the period of Declarant Control. The initial Directors shall be three (3) in number and shall be those Directors named in the Articles. The initial Directors shall serve until their successors are elected and qualified.

(b) Each Director shall be a Member, or in the case of an entity ownership of a Unit, a duly authorized agent or representative of the entity owner. The entity owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors.

(c) Not later than one hundred twenty (120) days after Declarant has conveyed to Owners other than Declarant title to fifty percent (50%) of the Units, an election shall be held by the Association, pursuant to these Bylaws, for the election of not less than one third of the members of the Board of Directors by Owners other than Declarant.

(d) At least thirty (30) days prior to the termination of the period of Declarant Control, the Association shall elect at least three (3) directors to the Board of Directors pursuant to the Bylaws, of which one will be elected for a three year term, one will be elected for a two year term and one will be elected for a one year term, such terms to commence as of the date on which the period of Declarant Control terminates.

**Section 7.2 Term of Directors and Compensation.** Except as otherwise set forth herein with respect to the terms of the initial Directors elected by the Members following the termination of the period of Declarant Control, each Director shall serve for a term of two (2) years and may serve an unlimited number of consecutive terms. Each Director shall continue to hold office until his successor is elected and qualified. The Directors shall serve without compensation for such service.

**Section 7.3 Vacancies on the Board of Directors.** If the office of any elected Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Owner which elected the Director for whom the office is now vacant, shall choose a successor within ten days of the vacancy. The successor Director shall fill the unexpired term of the directorship being vacated. At the expiration of the term of his position on the Board of Directors, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws.

**Section 7.4 Removal of Directors by Members.** Elected Directors may be removed, with or without cause, by the Member which elected the Director at any time; provided notice of the removal has been given to the entire Board of Directors, and the successor Director is elected in accordance with Section 7.3 of these Bylaws.

**Section 7.5 Organizational Meeting of the Board of Directors.** No later than twenty (20) days following each of (a) the establishment of the Association, and (b) each annual meeting of the Members of the Association, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with Section 7.8 of these Bylaws, except for the initial meeting, which shall be called by Declarant.

**Section 7.6 Place of Meetings.** All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Board of Directors or by written consent of all of the Directors. A special meeting of the Board of Directors may be held by any method of communication, including electronic and telephonic, by which each Director may hear and be heard by every other Director, and any such meeting may involve consideration of any action, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue.

**Section 7.7 Regular Board of Directors Meetings.** Regular meetings of the Board of Directors may be held at any time and place permitted by law as from time to time may be determined by the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, electronic mail, facsimile or by United States mail, with postage prepaid, directed to him at his last known post office address, as the same appears on the records of the Association, at least ten but not more than 40 days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting. Special meetings of the Board of Directors may be held by conference telephone; provided, however, at any regular meeting of the Board of Directors, not more than one Director may participate by telephone.

**Section 7.8 Special Meetings of the Board of Directors.** Special meetings of the Board of Directors may be called by the President on his own accord or by the President or the Secretary upon the written request of any one Director, on three days' prior notice to each Director.

**Section 7.9 Waiver of Notice.** Before any meeting of the Board of Directors, whether regular or special, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving the required notice. All written waivers shall be filed in the Minute Book of the Association or made a part of the minutes of the meeting. Attendance by a Director at any meeting of the Board of Directors shall likewise constitute a waiver by him of the required notice. If all Directors are present at any meeting of the Board of Directors, no notice of the meeting shall be required and any business may be transacted at the meeting except as prohibited by law or these Bylaws.

**Section 7.10 Directors Quorum.** At all duly convened meetings of the Board of Directors, two (2) Directors must be present to constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws subject to the limitations set forth in the Declaration. The acts of a majority of the Directors present at the meeting at which a quorum is present shall be the acts of the Board of Directors.

**Section 7.11 Consent in Writing.** Any action by the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue, may be taken without a meeting if all of the Directors shall unanimously consent in writing to the action. Such written consent shall be filed in the Minute Book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.

**Section 7.12 Records.** The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept and to present a general report thereof to the Members at each annual meeting of the Members of the Association or at any special meeting of the Members of the Association where a general report is requested in writing by at least twenty-five percent (25%) of the Allocated Interests.

**Section 7.13 Powers and Duties.** Subject to the Governing Documents, the Board of Directors shall have and exercise all powers and duties necessary for the proper administration of the affairs of the Association. In the performance of its duties as the governing body of the Association, subject to limitations set forth in the Declaration, the Board of Directors shall have all powers enumerated in Section 82.102 of the Act, and in addition to those powers and duties set forth in the Act and the Declaration, the Board of Directors shall have the powers and duties including, but not limited to, those enumerated below. Each Director individually and the Board of Directors collectively shall perform the duties and powers of the Board of Directors in good faith as a fiduciary of the Association, in a manner which the Director believes to be in the best interest of the Association and with the care of a person of ordinary prudence under similar circumstances, including, but not limited to, reasonable inquiry, skill and diligence.

(a) Duties:

(i) provide for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Elements and all property, real or personal, of the Association;

(ii) determine the Common Expenses and any other charges comprising the operating expenses of the Association, establish the amount of Monthly Assessments, as the same may increase or decrease, and assess the same against the Members in accordance with the provisions of the Declaration and these Bylaws;

(iii) levy and collect, in addition to Monthly Assessments, Special Assessments in amounts which the Board of Directors deems proper, whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies subject to the limitations specified in the Declaration;

(iv) use and expend any sums collected from Monthly Assessments and Special Assessments for the operation, maintenance, renewal, care and upkeep of the Common Elements;

(v) maintain the Common Elements;

(vi) maintain the Reserve Fund out of Monthly Assessments;

(vii) pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Member or otherwise properly chargeable to the Member;

(viii) collect delinquent Assessments against any Unit and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforce the terms of the Declaration and the observance of the Regulations by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;

(ix) establish operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time and as may be consistent with GAAP;

(x) adopt a budget for each fiscal year which shall contain estimates of the costs and expenses of the Association and the proposed Monthly Assessments which initial budget and certain increases shall be approved by Owners as required in the Declaration;

(xi) cause a complete review of the books and accounts of the Association to be made by a competent independent public accountant at the end of each fiscal year and at any other time or times deemed necessary;

(xii) maintain accounting records in accordance with GAAP; and

(xiii) make and enforce compliance with the Rules and Regulations relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Regulations which the Board of Directors shall adopt, and to amend the same from time to time as and when approved by appropriate resolutions which shall be binding on the Owners, tenants and occupants of the Units, their successors in title and assigns. A copy of the Rules and Regulations and copies of any amendments thereto shall be delivered or mailed to each Owner and any tenant or occupant of an Owner's Unit promptly upon the adoption thereof.

(b) Powers:

(i) employ and dismiss personnel of the Association, and purchase or arrange for those services, machinery, equipment, tools, materials and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common Elements;

(ii) subject to Section 7.16 of these Bylaws, enter into contracts for professional management of the Property and the Association, at such prices and upon such terms as may be determined by the Board of Directors, to perform those duties and services which the Board of Directors may lawfully delegate;

(iii) employ or retain and receive advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. The Board of Directors shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (A) one or more officers or employees of the Association whom the Board of Directors reasonably believes to be reliable and competent in the matter presented; (B) counsel, public accountants or other Persons as to the matters which the Board of Directors reasonably believes to be within the professional or expert competence of this Person; and (C) a committee of the Board of Directors duly designated in accordance with law, as to matters within its designated authority, which committee the Board of Directors reasonably believes to merit confidence. The Board of Directors shall not be considered to be acting in good faith if it has knowledge concerning the matter in question that would cause this reliance to be unwarranted;

(iv) name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor to this trustee (each of which shall be referred to herein as the "Insurance Trustee"), to be given exclusive authority to negotiate losses under any policy providing property or liability insurance coverage. The Association or any Insurance Trustee or substitute Insurance Trustee designated by the Association shall have the exclusive power to act as attorney-in-fact for the purpose of



purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;

(v) establish depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited. Withdrawal of monies shall be only by check signed by those Persons who are authorized by the Board of Directors to sign checks on behalf of the Association;

(vi) invest monies of the Association in any investments which the Board of Directors deems to be reasonably prudent;

(vii) borrow and repay monies and give notes, mortgages or other security upon the terms which are deemed reasonable by the Board of Directors;

(viii) acquire by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so;

(ix) grant and reserve easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common Elements and to amend the Map to show such interests;

(x) establish a form of estoppel certificate acceptable to the Association for delivery to prospective purchasers and lenders and an appropriate charge for furnishing such certificate and

(xi) do all things incidental and necessary to the accomplishment of the foregoing.

The duties and powers imposed on the Board of Directors by this Section 7.13 shall not be amended so as to reduce, eliminate or expand any duties or powers of the Board of Directors without the affirmative vote of at least sixty-seven percent (67%) of the votes of the Members voting at the meeting called to consider such amendment.

Notwithstanding anything contained in the Bylaws or the Act or the Texas Non-Profit Corporation Act, neither the Association, nor the Board of Directors, have the right, power or duty to file claims or institute litigation, subject to the mediation and arbitration provisions of the Declaration on its own behalf or on behalf of any of the Owners with respect to the Units owned by any Owner. The Owner shall be the sole persons with such authority, in no event shall this provision limiting the right and power of the Association and Board of Directors be amended by the Members, without the written approval of the Gal Gate, LLC, the Declarant, or the successors or assigns of such Declarant.

**Section 7.14 Conduct of Directors and Officers.** No Member, Director, officer or representative of the Association shall be personally liable for debts or liabilities of the

Association. The Directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, bad faith, intentional wrongful acts or as otherwise provided in the Declaration. Such Directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association.

**Section 7.15 Annual Budget and Assessments.** Copies of the Budget for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least 30 days prior to the beginning of each fiscal year of the Association and shall be available to all Members for inspection during regular business hours at the Association's office. If the Budget is subsequently amended before the Assessments are made, a copy of the amended Budget shall also be distributed and made available for inspection. Reserves shall include reasonable amounts to be credited, allocated or accumulated for replacement of those Common Area improvements or facilities that require replacement, renovation or rehabilitation periodically. Subject to the provisions of the Declaration, nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time and in its sole discretion, to levy a Special Assessment in the event that the budget as originally adopted shall appear to be insufficient to pay the cost of the operation or management of the Property or in the event of emergencies.

**Section 7.16 Management Certificate.** If the Board of Directors determine that it is in the best interest of the Association to hire a Manager for the Property in accordance with Section 7.16 of these Bylaws, the Association shall record in the County a certificate, signed and acknowledged by an officer of the Association stating:

- (a) the name of the Condominium;
- (b) the name of the Association;
- (c) the location of the Condominium;
- (d) the recording data for the Declaration;
- (e) the mailing address of the Association, or the name and mailing address of the Person managing the Association; and
- (f) other information the Association considers appropriate.

Such certificate shall be recorded within 30 days after the Association receives notice of a change in any of the information listed in (a) through (e) herein.

**Section 7.17 Manager.** To facilitate management of the Property and the administration of the Association, the Board of Directors may delegate to a Manager responsibility for matters of a routine nature, renewable by agreement of the parties thereto for successive one year periods only, and shall be subject to termination by either party with or without cause and without payment of a termination fee upon not more than 30 days' prior written notice. After a Manager has been appointed, no decision by the Association to manage its own affairs without a Manager shall be effective unless and until approved by an affirmative

vote of the Members holding not less than sixty-seven percent (67%) of the votes allocated by the Declaration.

**Section 7.18 Open Meeting.** Meetings of the Members of the Association and the Board of Directors shall be open to all Members. Subject to applicable law, the Board of Directors shall have the right to adjourn a meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, or enforcement actions, or upon the request of an affected party, or to consider matters that are confidential in the opinion of the Board of Directors; provided, however, the Board of Directors shall announce the general nature of the business to be considered in such executive session prior to adjourning the meeting.

## **ARTICLE VIII Officers**

**Section 8.1 Officers.** The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and Treasurer. The same individual may not hold the offices of President and Secretary. The Secretary may be eligible to hold the office of Treasurer. The President and Secretary shall not be representatives of the same entity Owner. The President and Treasurer must also be Directors. The Secretary need not be a Director.

**Section 8.2 Election.** Except as set forth herein, the officers of the Association shall be elected annually by the Board of Directors at the organizational meeting held pursuant to Section 7.5 of these Bylaws and shall hold office until their successors are elected or appointed by the Board of Directors; provided that each officer may be removed, either with or without cause, whenever in the best interest of the Association, and his successor elected by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors called for that purpose. The President and Secretary shall each serve for a term of two (2) years and the remaining officers shall serve for a term of one (1) year. The Board of Directors may, from time to time, appoint other officers who, in its judgment, are necessary. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of this notice or any later time specified therein; unless specified therein, the acceptance of a written resignation shall not be necessary to make it effective.

**Section 8.3 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

**Section 8.4 President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members of the Association and the Board of Directors. The President shall have the general powers and duties usually vested in the office of the president of a community Association, including, but not limited to, the power to appoint committees from the Members from time to time as he may deem appropriate to assist in the conduct of the affairs of the Association provided, however, no such committee shall have the right to exercise the full authority of the Board of Directors. The President shall be an ex-officio member of all standing committees, if any. The President shall execute deeds, contracts and

other instruments, in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

**Section 8.5 Vice President.** In the absence of the President or in the event of the President's inability or refusal to act, a Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all of the restrictions upon the President. Any Vice President shall have only such powers and perform only such duties as the Board of Directors may from time to time prescribe or as the officers may from time to time delegate.

**Section 8.6 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members of the Association and record all votes and the minutes of all meetings and Proceedings, including resolutions, in the Minute Book. The Secretary shall perform the same duties for any committees when required. The Secretary shall have charge of the Minute Book, the records of the Association and any papers which the Board of Directors shall direct the Secretary to keep; shall perform all duties incident to the office of Secretary, including, but not limited to, the sending of notice of meetings to the Members, the Directors and members of any committees, and shall perform any other duties which may be prescribed by these Bylaws or by the Board of Directors or the President. The Secretary shall also have custody of the corporate seal and shall affix the same to any instrument requiring it when authorized by the Board of Directors and shall attest or certify the same when appropriate. The Secretary shall keep, or cause to be kept, at the principal office of the Association, a membership register showing the following: (a) the names and addresses of all Directors; (b) the names and addresses of all Members as provided by the Members; (c) the Unit that is owned by each Member; and (d) the vote of each Member. The Secretary shall prepare, execute and cause the recordation of amendments to the Declaration on behalf of the Association except when the preparation, execution and recordation thereof shall be delegated by the Board of Directors to another officer or agent of the Association. Nothing shall prohibit the functions of the Secretary to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Secretary shall not relieve the Secretary from any responsibility related to overseeing and reviewing any duties performed by the agent.

**Section 8.7 Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name of and to the credit of the Association in those depositories which may be designated from time to time by the Board of Directors. The Treasurer shall disburse the funds of the Association, as the Treasurer may be ordered to do from time to time by the Board of Directors or by the President, and shall render to the President and the Directors at the regular meetings of the Board of Directors, or whenever they or either of them shall require, an account of his transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The

delegation of the duties of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the agent.

**Section 8.8 Compensation.** The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

**ARTICLE IX**  
**Indemnification of Directors,**  
**Officers and Other Authorized Representatives**

**Section 9.1 General Indemnification.** The Association shall indemnify an individual who was, is or is threatened to be made a named defendant or respondent in a Proceeding because the individual is or was a Director only if it is determined in accordance with Section 9.5 of these Bylaws that the individual: (1) conducted himself or herself in good faith; (2) reasonably believed: (a) in the case of conduct in such individual's Official Capacity as a Director of the Association, that his conduct was in the Association's best interests, and (b) in all other cases, that his conduct was at least not opposed to the Association's best interests; and (3) in the case of any criminal Proceeding, had no reasonable cause to believe that his conduct was unlawful.

**Section 9.2 Personal Interest or Liability.** A Director shall not be indemnified by the Association as provided in Section 9.1 of these Bylaws for obligations resulting from a Proceeding: (1) in which the Director is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the individual's Official Capacity; or (2) in which the individual is found liable to the Association, except to the extent permitted in Section 9.4 of these Bylaws.

**Section 9.3 Final Judgment Required.** The termination of a Proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the individual did not meet the requirement set forth in Section 9.1 of these Bylaws. An individual shall be deemed to have been found liable in respect of any claim, issue or matter only after the individual shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom or after such judgment becomes final and non-appealable.

**Section 9.4 Limited Indemnification.** An individual may be indemnified by the Association as provided in Section 9.1 of this Article IX against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses, including court costs and reasonable attorneys fees actually incurred by the individual in connection with a Proceeding; but if the individual is found liable to the Association or is found liable on the basis that personal benefit was improperly received by the individual, the indemnification (1) is limited to reasonable expenses actually incurred by the individual in connection with the Proceeding including court costs and reasonable attorneys' fees, and (2) shall not be made in respect of any Proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his or her duty to the Association.

**Section 9.5 Determination of Indemnification.** A determination of indemnification under Section 9.1 of these Bylaws must be made: (1) by a majority vote of a quorum of Directors who at the time of the vote are not named defendants or respondents in the Proceeding; (2) if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the Proceeding; or (3) by special legal counsel selected by the Board of Directors or a committee of the Board of Directors by vote as set forth in subsection (1) or (2) of this Section 9.5 or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

**Section 9.6 Authorization and Determination of Reasonableness of Expenses.** Authorization of indemnification and determination as to reasonableness of expenses (including court costs and reasonable attorneys' fees) must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification, and determination as to reasonableness of expenses (including court costs and reasonable attorneys' fees) must be made in the manner specified by subsection (3) of Section 9.5 of these Bylaws for the selection of special legal counsel. A provision contained in the Articles, these Bylaws, a resolution of the Board of Directors or an agreement that makes mandatory the indemnification described in Section 9.1 of these Bylaws shall be deemed to constitute authorization of indemnification in the manner required herein, even though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

**Section 9.7 Success in a Proceeding.** The Association shall indemnify a Director against reasonable expenses (including court costs and reasonable attorneys' fees) incurred by him in connection with a Proceeding in which he is a named defendant or respondent because he is or was a Director if he has been wholly successful on the merits or otherwise, in the defense of the Proceeding.

**Section 9.8 Court Determination of Indemnification.** If, upon application of a Director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the Director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section 9.1 of these Bylaws or has been found liable in the circumstances described in Section 9.2 of these Bylaws, the Association shall indemnify the Director to such further extent as the court shall determine; but if the individual is found liable to the Association or is found liable on the basis that personal benefit was improperly received by the individual, the indemnification shall be limited to reasonable expenses (including court costs and reasonable attorneys' fees) actually incurred by the individual in connection with the Proceeding.

**Section 9.9 Advancing Director Expenses.** Reasonable expenses (including court costs and reasonable attorneys' fees) incurred by a Director who was, is, or is threatened to be made a named defendant or respondent in a Proceeding may be paid or reimbursed by the Association in advance of the final disposition of the Proceeding and without the determination specified in Section 9.5 of these Bylaws or the authorization or determination specified in

Section 9.6 of these Bylaws after the Association receives a written affirmation by the Director of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article IX and a written undertaking by or on behalf of the Director to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or it is ultimately determined that indemnification of the Director against expenses (including court costs and reasonable attorneys fees) incurred by him in connection with that Proceeding is prohibited by Section 9.4 of these Bylaws. A provision contained in the Articles, these Bylaws, a resolution of the Board of Directors, or an agreement that makes mandatory the payment or reimbursement permitted under this Section 9.9 shall be deemed to constitute authorization of that payment or reimbursement.

**Section 9.10 Repayment of Expenses by Director.** The written undertaking required by Section 9.9 of these Bylaws must be an unlimited general obligation of the Director but need not be secured. It may be accepted without reference to financial ability to make repayment.

**Section 9.11 Witness Expenses.** Notwithstanding any other provision of this article, the Association shall pay or reimburse expenses (including reasonable attorneys' fees) incurred by a Director in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

**Section 9.12 Officer Indemnification.** An officer of the Association shall be indemnified by the Association as and to the same extent provided for a Director by Sections 9.1, 9.6, 9.7 and 9.8 of these Bylaws and is entitled to seek indemnification under those Sections to the same extent as a Director. The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to an officer, employee or agent of the Association to the same extent that it may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to Directors under this Article IX.

**Section 9.13 Indemnification of Others.** The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to individuals who are not or were not officers, employees, or agents of the Association but who are or were serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust or other enterprise to the same extent that it may indemnify and advance expenses (including court costs and reasonable attorneys fees) to Directors under this Article IX.

**Section 9.14 Advancing Expenses for Others.** The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to an officer, employee, agent, or individual identified in Section 9.13 of these Bylaws and who is not a Director to such further extent, consistent with law, as may be provided by the Articles, these Bylaws, general or specific action of the Board of Directors or contract or as permitted or required by common law.

**Section 9.15 Insurance Authorized.** The Association shall, to the extent economically practicable, purchase and maintain insurance or another arrangement on behalf of any individual who is or was a Director, officer, employee or agent of the Association or who is or was serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee,

employee, agent, or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Association would have the power to indemnify him against that liability under this Article IX. Without limiting the power of the Association to procure or maintain any kind of insurance or other arrangement, the Association may, for the benefit of individuals indemnified by the Association: (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligations by grant of a security interest or other lien on the assets of the Association; or (4) establish a letter of credit, guaranty or surety agreement. The insurance or other arrangement may be procured, maintained or established within the Association or with any insurer or other individual deemed appropriate by the Board of Directors, regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Association. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in an arrangement shall be conclusive, and the insurance or arrangement shall not be voidable and shall not subject the Directors approving the insurance or arrangement to liability, on any ground, regardless of whether Directors participating in the approval are beneficiaries of the insurance or arrangement. Notwithstanding the provisions of this Section 9.15 in the event of any conflict between the provisions of this Section 9.15 and the provisions of the Declaration, the provisions of the Declaration shall control.

**Section 9.16 Indemnification Prohibited by the Declaration.** Notwithstanding any provision of this Article IX to the contrary, no indemnification shall be authorized by or provided under this Article IX for any act in violation of any Legal Requirements.

## **ARTICLE X**

### **Association Books and Records**

The Association shall keep or cause to be kept (a) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of Section 82.157 of the Act, (b) the plans and specifications used to construct the Condominium, (c) the name and mailing address of each Owner of a Unit; (d) voting records, proxies and correspondence relating to all amendments to the Declaration and (e) the minutes of all meetings of the Members of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Owners, Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with GAAP, consistently applied, and shall be audited at least once a year by an independent certified public accountant. If requested in writing by a Member or Mortgagee, the Association shall furnish such requesting Member or Mortgagee copies of the audited financial statements of the Association within 90 days following the end of each fiscal year of the Association. The Board of Directors shall further make available for the inspection by Members, Mortgagees, and their respective agents and representatives, during normal business hours, the current version of the Governing Documents and all other documents affecting the Association, the Owners, or the Property, as well as all amendments thereto and revisions thereof. Declarant shall furnish copies of the information set forth in this Article X to the Association on the date the first Unit is conveyed to



an Owner. For purposes of this paragraph, "available" shall mean available for inspection, upon reasonable advance request of not less than 24 hours, during regular business hours at the office of the Association or the office of a Manager of the Association. The cost of any copies shall be reimbursed to the Association at a rate set by the Board of Directors.

**ARTICLE XI**  
**Dissolution and Termination**

Upon dissolution of the Association, the real and personal property of the Association shall be distributed pursuant to the provision of the Articles or, if no such provision is made, distributed to one or more organizations which are exempt from taxation under Section 501(c)(3) of the Code.

**ARTICLE XII**  
**Miscellaneous**

**Section 12.1 Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.

**Section 12.2 Amendments to Bylaws.**

(a) These Bylaws may be amended from time to time by the affirmative vote in person or by proxy of seventy-five percent (75%) of all of the Members voting at a meeting called to consider such amendment, and affirmative approval of Declarant with respect to amendment of Section 7.13.

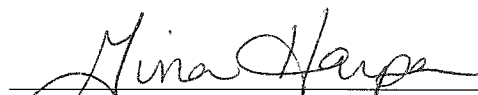
(b) Members must be given notice of the meeting required by Section 12.2(a) of these Bylaws not less than ten or more than 20 days preceding the date of the meeting. Any such notice shall include the specific amendment or other change proposed to be made to these Bylaws.

**Section 12.3 Inspection of Bylaws.** The Association shall keep in its principal office the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members during normal business hours.

**Section 12.4 Membership Minutes.** The membership register and the Minute Book shall be open to inspection within one business day of demand of any Member during the normal business hours of the Association, for purposes reasonably related to the interests of such Member.

**Section 12.5 Construction.** Number and gender as used in these Bylaws shall extend to and include both singular and plural and all genders as the context and construction require.

Adopted as of 5-9, 2006.

  
Secretary of the Association



**Affidavit of Dedicatory Instrument  
of the Eibands Luxury Condominiums Association, Inc.**

Before me, the undersigned authority, on this day personally appeared Brooks Hirsch, who after being duly sworn by me, stated upon his oath that:

"My name is Brooks Hirsch. I am duly elected and currently serving as the Secretary of the Eibands Luxury Condominiums Association, Inc. ("Association"), a Texas non-profit corporation.

The Association is the designated and acting property owner's association (as defined under Chapter 202 of the Texas Property Code) of the Eibands Luxury Condominiums ("Condominiums"), of Galveston County, Texas.

This Affidavit is made and recorded, with the attachments hereto, as required by §202.006, Texas Property Code.

Attached hereto as exhibits, and made a part hereof, are true and correct copies of the dedicatory instrument, as currently written, of the Association."

Brooks Hirsch

SWORN AND SUBSCRIBED TO before me on Feb. 4, 2009.

Notary Public, State of Texas



**After recording, return to:**  
Dennis J. Albright  
Attorney at Law  
2201 Market St., Suite 418  
Galveston, Texas 77550

**\$ PAID**

EXHIBIT A

**FILED**  
In the Office of the  
Secretary of State of Texas

MAY 09 2008

**Corporations Section**

CERTIFICATE OF FORMATION

OF

EIBANDS LUXURY CONDOMINIUMS ASSOCIATION, INC.

The undersigned natural person of the age of 18 years or more, acting as an incorporator of a non-profit corporation under the Texas Business Organizations Code, hereby adopts the following Certificate of Formation (the "Certificate") for such corporation:

ARTICLE I

NAME

The name of the corporation is Eibands Luxury Condominiums Association, Inc. (the "Association").

ARTICLE II

NON-PROFIT CORPORATION

The corporation is a non-profit corporation.

ARTICLE III

DURATION

The duration of the Association is perpetual.

ARTICLE IV

PURPOSES AND POWERS

The Association is organized to act as the association of owners of each unit ("Unit") in Eibands Luxury Condominiums in Galveston, Galveston County, Texas, in accordance with the Condominium Declaration recorded in the Official Public Records of Real Property of Galveston County, Texas (the "Declaration"), the Bylaws of the Association (the "Bylaws"), and Texas law, including the Texas Uniform Condominium Act, § 82.001, et. seq. of the Texas Property Code (the "Act"), as each may be amended from time to time.

In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by this Certificate, the Declaration, the Bylaws, or the laws of the State of Texas ("Texas Law"), may be exercised by the Board of Directors of the Association (the "Board of Directors"):

- A. All rights and powers conferred upon non-profit corporations by Texas Law in effect from time to time;
- B. All rights and powers conferred upon condominium associations by Texas Law, including the Act, in effect from time to time; and
- C. All powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in this Certificate, the Bylaws, the Declaration, or Texas Law.

#### ARTICLE V MEMBERSHIP

The Association shall be a non-stock membership corporation. The Declaration and Bylaws shall determine the number and qualifications of Members of the Association; the membership, the voting rights and other privileges of membership; and the obligations and liabilities of members. Cumulative voting is not allowed.

A member of the Association ("Member") shall be considered to be a "Member in Good Standing" and eligible to vote if such Member:

- A. has, at least ten (10) days prior to the taking of any vote by the Association, fully paid all assessments or other charges levied by the Association ("Assessments") that are due and payable, as such Assessments are provided for under the Declaration;
- B. does not have any notice of unpaid Assessments that has been filed by the Association against the Unit owned by such Member; and
- C. has discharged all other obligations to the Association as may be required of a Member, as an owner of a Unit under the Declaration, Bylaws or Rules and Regulations.

The Board of Directors shall have sole authority for determining the good standing status of any member and shall make such determination prior to a vote being taken by the Association on any matter. The Board of Directors shall have the right and authority, in its sole discretion, to waive the requirement set forth in subsections (A) (B) and (C) above, of this Article V, and as to subsection (A) of this Article V require only that such payment be made at any time before such vote is taken if the Board of Directors shall determine, in the Board of Directors judgment, that extenuating circumstances exist which have prevented prior payment. Any Member not conforming with the provisions of this Article V shall be declared by the Board of Directors not to be a Member in Good Standing and shall not be entitled to vote on matters before the Association until such time as a Member in Good Standing status is attained and so declared by the Board of Directors.

The Association shall have voting membership as specified in the Declaration and the Bylaws.

Members in Good Standing holding at least 50% of the aggregate votes entitled to be cast by the Members represented at a meeting of the Members in person or by a legitimate proxy in a form approved by the Board of Directors, shall constitute a quorum for voting on matters brought before the Members at meetings called by the Board of Directors (a "Quorum"). Except as otherwise provided by the Act, the vote of Members in Good Standing holding, in the aggregate, 51% of the votes entitled to be cast by the Members in Good Standing present or voting by legitimate proxy at a called meeting at which a Quorum is present (the "Majority Vote of the Members") shall be the act of the Members. Notice requirements for all actions proposed to be taken by the Association which require an approval by a vote of the Members shall be given as set forth in the Bylaws, as such may be amended from time to time.

**ARTICLE VI**  
**MANAGEMENT OF THE ASSOCIATION**

The management and affairs of the Association shall be vested in the Board of Directors, except for those matters expressly reserved to others in the Declaration and Bylaws. The Bylaws shall determine the number and qualification of directors; the term of office of directors; the methods of electing, removing, and replacing directors; and the methods of holding a meeting of the Board of Directors and obtaining consents.

**ARTICLE VII**  
**DISSOLUTION AND TERMINATION**

The Association may be dissolved only by resolution adopted by the Board of Directors which is approved by the Members in Good Standing holding in the aggregate at least two-thirds (2/3) of the votes eligible to be cast by the Members in Good Standing present or voting by legitimate proxy at a called meeting at which a Quorum is present. Upon a termination of the Association, all assets, both real and personal, of the Association shall be applied and distributed in accordance with the provisions of Chapter 22 of the Texas Business Organizations Code, as amended.

**ARTICLE VIII**  
**REGISTERED OFFICE AND AGENT**

The street address of the Association's initial registered office is 353 E. Parkwood, Friendswood, Texas 77546, and the name of its initial registered agent at such address Jerome Karam.

**ARTICLE IX**  
**INITIAL DIRECTORS**

The number of directors constituting the initial Board of Directors is three (3), and the names and addresses of the persons who are to serve as directors are:

Jerome Karam	Gal Gate, LLC 353 E. Parkwood Friendswood, Texas 77546
Joe Broussard	119 Bayou Vista Drive Hitchcock, TX 77563
Gina Harper	12609 Sunset Circle Santa Fe, TX 77510

The name and address of the incorporator is:

Jerome Karam  
353 E. Parkwood  
Friendswood, TX 77540

This document becomes effective when the document is filed by the secretary of state.

IN WITNESS WHEREOF, I have hereunto set my hand this the 9<sup>th</sup> day of May, 2006.

  
\_\_\_\_\_  
Jerome Karam, Incorporator

**EXHIBIT B**

**RESTATED AND AMENDED BYLAWS  
OF  
EIBANDS LUXURY CONDOMINIUM ASSOCIATION, INC.**



**RESTATED AND AMENDED  
BYLAWS OF EIBANDS LUXURY CONDOMINIUM ASSOCIATION, INC.**

These Restated and Amended Bylaws of Eibands Luxury Condominium Association, Inc. ("Restated Bylaws") supersede, replace and amend the Eibands Luxury Condominium Association, Inc., Bylaws ("Original Bylaws") adopted as of 5-9, 2006. In the event of any inconsistency between the terms and provisions of these Restated Bylaws and the Original Bylaws, the terms and conditions of these Restated Bylaws shall control. All references herein to the "Bylaws" of the Association shall mean and refer to these Restated Bylaws. These Restated Bylaws are adopted by Gal Gate, LP, a Texas limited partnership, the sole Member of the Association.

**ARTICLE I  
Name and Address**

**Section 1.1 Name.** The name of this Association shall be **EIBANDS LUXURY CONDOMINIUMS ASSOCIATION, INC.**

**Section 1.2 Address.** The office of the Association shall be at the place to be designated by the Board of Directors, subject to change upon notice to the Members of the Association.

**Section 1.3 Registered Agent.** The Association shall have and continuously maintain in the State of Texas a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical to the principal office in the State of Texas, and the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II  
Applicability**

These Bylaws shall be applicable to the Association. In accordance with the terms of the Declaration, all Members and any other Persons permitted to use the Common Elements shall be subject to these Bylaws and to any rules and regulations adopted from time to time by the Board of Directors. Ownership of any Unit, or rental or occupancy of any portion of a Unit in the Property shall be conclusively deemed to mean that the Tenant or occupant has accepted, ratified and will comply with the Governing Documents.

**ARTICLE III  
Purpose**

The purpose of the Association is to protect and enhance the value of the Property, including, without limitation, providing for the management of the Common Elements. The

Association does not contemplate pecuniary gain or profit to its Members as a result of membership in the Association.

#### **ARTICLE IV Definitions and Interpretation**

**Section 4.1 Definitions.** The following terms shall have the meanings set forth below. Any capitalized terms not expressly defined herein shall have the same meaning as defined in the Declaration.

**"Act."** The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.

**"Association."** Eibands Luxury Condominiums Association, Inc., a Texas non-profit Corporation for the purposes of Section 9.1 of these Bylaws, any domestic or foreign successor entity of the Association in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Association by operation of law and in any other transaction in which the Association assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of Article IX of these Bylaws.

**"Board of Directors."** Those individuals serving as Board of Directors pursuant to Article VII of these Bylaws and their successors as duly elected and qualified from time to time.

**"Code."** The Internal Revenue Code of 1986, as amended.

**"Common Expenses."** Expenses for which the Association is responsible, including: (i) the Expenses; (ii) those insurance coverages as may be maintained by the Association as described in the Declaration; (iii) professional services for the Association, such as management, accounting and legal services; and (iv) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation, management and administration of the Association and the Common Elements.

**"Condominium."** Eibands Luxury Condominiums, formed pursuant to the Declaration.

**"County."** Galveston County, Texas.

**"Declarant Control."** The period commencing on the date of the Declaration and continuing until one hundred twenty (120) days after the date that deeds to not less than 75% of the Units have been recorded in the real property records of the County, subject, however to the provisions of Section 10.2.

**"Declaration."** The Condominium Declaration for EIBANDS LUXURY CONDOMINIUMS dated June 1, 2006, recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, and all recorded amendments thereto, which shall be recorded in the real property records of the County.

**"Director."** A member of the Board of Directors, and for the purposes of Article IX of these Bylaws any individual who is or was a director of the Association and any individual who,

while a director of the Association, is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

**"GAAP."** Generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board.

**"Governing Documents."** Individually and collectively the Act, the Declaration, the Articles, the Bylaws, and the Rules and Regulations.

**"Improvements."** The Buildings and their infrastructure, and the pavement, fencing, landscaping, facilities, Systems, and man-made objects of every type, existing or in the future placed on the Property, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

**"Lien Indebtedness."** Any bona fide indebtedness, which is the result of an arm's-length negotiation secured by a lien or encumbrance upon an Owner's Unit.

**"Majority Vote of the Members."** Members in Good Standing holding, in the aggregate, a majority of the votes entitled to be cast by the Members in Good Standing present or voting by legitimate proxy at a called meeting at which a Quorum is present.

**"Manager."** Any experienced and professional manager or management company with whom the Association contracts for the day-to-day management of either or both of the Property or the administration of the Association and the Condominium.

**"Member in Good Standing."** Has the meaning set forth in the Articles.

**"Members."** All present and future Owners in the Condominium.

**"Mortgagee."** Any Person that is the holder, insurer or guarantor of Lien Indebtedness which has provided the Association with written notice of its name, address and the description of the Unit on which it holds Lien Indebtedness.

**"Minute Book."** The minute book of the Association, which shall contain the minutes of all annual and special meetings of the Members of the Association and the Board of Directors and all resolutions of the Board of Directors.

**"Official Capacity."** (i) when used with respect to a Director, the office of director in the Association, and (ii) when used with respect to a individual other than a Director, the elective or appointive office in the Association held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Association, but (iii) both (i) and (ii) above do not include service for any other foreign or domestic Association or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

**"Person."** Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any

other legal entity, including any public or governmental body, agency or instrumentality and any fiduciary acting in such capacity on behalf of any of the foregoing.

**"President."** The officer of the Association having the duties described in Section 8.4 of these Bylaws.

**"Proceeding."** Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, any appeal in such an action, suit, or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding.

**"Property."** The Units and the Common Elements.

**"Quorum."** Has the meaning set forth in Section 5.2 of these Bylaws.

**"Reserve Fund."** A fund to be maintained by the Association to meet unforeseen expenditures of the Association or to purchase any additional equipment or services deemed necessary by the Association for operation of the Condominium subject to the provisions of the Declaration.

**"Rules and Regulations."** The rules and regulations of the Association initially adopted by the Association and as restated and amended from time to time relating to the appearance, use, and occupancy of the Property, including exterior appearance, use and occupancy of the Units.

**"Secretary."** The officer of the Association having the duties described in Section 8.6 of these Bylaws.

**"Treasurer."** The officer of the Association having the duties described in Section 8.7 of these Bylaws.

**"Unit."** A physical portion of the Condominium that is designated for separate ownership or occupancy with the unrestricted right of ingress thereto and egress therefrom, together with an undivided interest, appurtenant to such Unit, in and to the Common Elements, and includes (i) all Systems which exclusively serve such Unit and (ii) the finish materials, fixtures and appliances contained in the Unit, but excludes (a) any of the Structure of the Building(s) in which such Unit is located and (b) Systems which serve more than one Unit, all as subject to and further described in Section 82.052 of the Act.

**Section 4.2 Interpretation.** In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. If the Code is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Code with respect to nonprofit entities, it being the intention to preserve the status of the Association as a *bona fide* nonprofit entity.

**ARTICLE V**  
**Member**

**Section 5.1 Membership.**

(a) Each Owner shall automatically be a Member of the Association. The voting rights and procedures are set forth in the Declaration.

(b) In cases where more than one Person owns an interest in a Unit, all such Persons shall arrange among themselves for one of their number to exercise the voting rights herein established. In no event shall there be more than one vote for any Unit. If only one of the Persons is present at a meeting of the Association, that Person may cast that Unit's vote. If more than one of the Persons is present and after one Person casts the vote, another Person present makes prompt protest to the Person presiding over the meeting, such vote shall not be counted unless such Persons can unanimously agree on such vote by the end of the meeting. Each Person owning a portion of the fee interest in a Unit may vote or register protest to the casting of votes by the other Persons owning portions of the fee interest in the same Unit through a proxy duly executed by such Member. A Member may not revoke a proxy except by giving actual written notice of revocation to the Person presiding over the meeting.

**Section 5.2 Affirmative Vote.** Members in Good Standing holding fifty percent (50%) of the aggregate votes entitled to be cast by the Members, represented at a meeting of the Members in person or by a legitimate proxy in a form approved by the Board of Directors, shall constitute a quorum for voting on matters brought before the Members at meetings called by the Board of Directors (a "Quorum"). The vote of the Majority Vote of the Members shall be the act of the Members. A vote may be cast either in person or by proxy, by Members in Good Standing. Notice and quorum requirements shall be as set forth herein. Cumulative voting shall not be permitted.

**Section 5.3 Membership List.** The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known addresses as provided by each Member. The list shall also show opposite each Member's name the address of the Unit owned. The list shall be revised by the Secretary to reflect changes in the ownership of the Units occurring prior to the date of the annual or special meeting. The list shall be open to inspection by all Members and other Persons lawfully entitled to inspect the list during regular business hours up to the date of the annual or special meeting. The Secretary shall also keep current and retain custody of the Minute Book. Membership of a Member in the Association shall automatically terminate when such Member ceases to be an Owner; provided, however, that such termination shall not release or relieve such Member from any liability or obligation under the Declaration that was incurred during such Member's period of ownership of a Unit.

**Section 5.4 Proxies.** Votes may be cast by written proxy or by ballot. Written proxies may be submitted by United States mail, delivered to the office of the Association, delivered directly to the Secretary or delivered in such other manner as directed by the Association. A proxy vote shall be defined as a written vote submitted by a Member which either states the specific vote of the Member with respect to the issues, resolutions or election being voted on by

the Members at the annual or special meeting or which is written permission for the Board of Directors or a specific Director to exercise the Member's vote as the Board of Directors or the specific Director sees fit. A proxy shall be valid for the meeting specified in the proxy or any valid continuation of such meeting. Each proxy shall be revocable unless otherwise expressly provided therein to be irrevocable. No proxy will be valid after 11 months from the date of its execution unless otherwise provided therein.

## **ARTICLE VI**

### **Meetings of the Members of the Association**

**Section 6.1 Place of Annual and Special Meetings.** All annual and special meetings of the Members of the Association shall be held at the principal office of the Association or at another suitable and convenient place permitted by law and fixed by the Board of Directors from time to time and designated in the notices of the meetings.

**Section 6.2 Date of Annual Meetings.** The first annual meeting of the Members of the Association shall be held within one year of its formation. Thereafter, annual meetings of the Members of the Association shall be held in January each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business that may properly come before the meeting.

**Section 6.3 Notice of Annual Meetings.** The Secretary shall mail notices of annual meetings to each Member directed to the most recent post office address provided to the Association by such Member, as shown on the records of the Association, by regular mail, postage prepaid. This notice shall be mailed not less than ten or more than 40 days before the date of the meeting and shall state the date, time and place of the meeting, the purpose or purposes thereof and the items on the agenda, including the specific nature of any proposed amendment or change to the Governing Documents.

**Section 6.4 Special Meeting.** A special meeting of the Members of the Association may be called by the President, a majority of the Directors, or upon presentation to the Secretary of a petition stating the specific purpose of the special meeting, which petition has been signed by Members having not less than twenty-five percent (25%) of the aggregate votes entitled to be cast at such meeting.

**Section 6.5 Notice of Special Meetings.** The Secretary shall mail notice of any special meeting of the Members of the Association to each Member in the manner provided in Section 6.3 of these Bylaws. The notice shall state the same items required by Section 6.3 of these Bylaws for notices of annual meetings. No business shall be transacted at any special meeting except as stated in the notice thereof.

**Section 6.6 Quorum.** At any duly convened meeting of the Members of the Association, a quorum shall be present if at least fifty percent (50%) of the Members in Good Standing are present in person or proxy at the beginning of the meeting.

**Section 6.7 Agenda.** The agenda at all meetings of the Members of the Association shall include: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) approval of the

minutes of the preceding meeting; (d) reports of officers and committees; (e) election of Directors, if applicable; (f) unfinished business; (g) new business; and (h) adjournment.

**Section 6.8 Action without Meeting by Written Ballot.** Any action which may be taken by the vote of the Members at a regular or special meeting, other than the election of Directors, may be taken without a meeting if done in compliance with relevant provisions of the Texas Non-Profit Corporation Act. If an action is taken without a meeting, the Board of Directors shall distribute a written ballot to every Member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the proposal at a regular or special meeting authorizing the action.

**Section 6.9 Administration of Affairs.** Subject to the provisions of the Governing Documents the Board of Directors shall govern the Association.

## **ARTICLE VII The Board of Directors**

### **Section 7.1 Authority; Number of Directors.**

(a) Except as is provided below, Declarant shall have the right to appoint and remove members of the Board of Directors during the period of Declarant Control. If Declarant voluntarily surrenders control prior to the termination of the period of Declarant Control, Declarant may require that specified actions of the Board of Directors be subject to Declarant approval until the expiration of the period of Declarant Control. The initial Directors shall be three (3) in number and shall be those Directors named in the Articles. The initial Directors shall serve until their successors are elected and qualified.

(b) Each Director shall be a Member, or in the case of an entity ownership of a Unit, a duly authorized agent or representative of the entity owner. The entity owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors.

(c) Not later than one hundred twenty (120) days after Declarant has conveyed to Owners other than Declarant title to fifty percent (50%) of the Units, an election shall be held by the Association, pursuant to these Bylaws, for the election of not less than one third of the members of the Board of Directors by Owners other than Declarant.

(d) At least thirty (30) days prior to the termination of the period of Declarant Control, the Association shall elect at least three (3) directors to the Board of Directors pursuant to the Bylaws, of which one will be elected for a three year term, one will be elected for a two year term and one will be elected for a one year term, such terms to commence as of the date on which the period of Declarant Control terminates.

**Section 7.2 Term of Directors and Compensation.** Except as otherwise set forth herein with respect to the terms of the initial Directors elected by the Members following the termination of the period of Declarant Control, each Director shall serve for a term of two (2) years and may serve an unlimited number of consecutive terms. Each Director shall continue to hold office until his successor is elected and qualified. The Directors shall serve without compensation for such service.

**Section 7.3 Vacancies on the Board of Directors.** If the office of any elected Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Owner which elected the Director for whom the office is now vacant, shall choose a successor within ten days of the vacancy. The successor Director shall fill the unexpired term of the directorship being vacated. At the expiration of the term of his position on the Board of Directors, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws.

**Section 7.4 Removal of Directors by Members.** Elected Directors may be removed, with or without cause, by the Member which elected the Director at any time, provided notice of the removal has been given to the entire Board of Directors, and the successor Director is elected in accordance with Section 7.3 of these Bylaws.

**Section 7.5 Organizational Meeting of the Board of Directors.** No later than twenty (20) days following each of (a) the establishment of the Association, and (b) each annual meeting of the Members of the Association, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with Section 7.8 of these Bylaws, except for the initial meeting, which shall be called by Declarant.

**Section 7.6 Place of Meetings.** All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Board of Directors or by written consent of all of the Directors. A special meeting of the Board of Directors may be held by any method of communication, including electronic and telephonic, by which each Director may hear and be heard by every other Director, and any such meeting may involve consideration of any action, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue.

**Section 7.7 Regular Board of Directors Meetings.** Regular meetings of the Board of Directors may be held at any time and place permitted by law as from time to time may be determined by the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, electronic mail, facsimile or by United States mail, with postage prepaid, directed to him at his last known post office address, as the same appears on the records of the Association, at least ten but not more than 40 days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting. Special meetings of the Board of Directors may be held by conference telephone; provided, however, at any regular meeting of the Board of Directors, not more than one Director may participate by telephone.



**Section 7.8 Special Meetings of the Board of Directors.** Special meetings of the Board of Directors may be called by the President on his own accord or by the President or the Secretary upon the written request of any one Director, on three days' prior notice to each Director.

**Section 7.9 Waiver of Notice.** Before any meeting of the Board of Directors, whether regular or special, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving the required notice. All written waivers shall be filed in the Minute Book of the Association or made a part of the minutes of the meeting. Attendance by a Director at any meeting of the Board of Directors shall likewise constitute a waiver by him of the required notice. If all Directors are present at any meeting of the Board of Directors, no notice of the meeting shall be required and any business may be transacted at the meeting except as prohibited by law or these Bylaws.

**Section 7.10 Directors Quorum.** At all duly convened meetings of the Board of Directors, two (2) Directors must be present to constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws subject to the limitations set forth in the Declaration. The acts of a majority of the Directors present at the meeting at which a quorum is present shall be the acts of the Board of Directors.

**Section 7.11 Consent in Writing.** Any action by the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue, may be taken without a meeting if all of the Directors shall unanimously consent in writing to the action. Such written consent shall be filed in the Minute Book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.

**Section 7.12 Records.** The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept and to present a general report thereof to the Members at each annual meeting of the Members of the Association or at any special meeting of the Members of the Association where a general report is requested in writing by at least twenty-five percent (25%) of the Allocated Interests.

**Section 7.13 Powers and Duties.** Subject to the Governing Documents, the Board of Directors shall have and exercise all powers and duties necessary for the proper administration of the affairs of the Association. In the performance of its duties as the governing body of the Association, subject to limitations set forth in the Declaration, the Board of Directors shall have all powers enumerated in Section 82.102 of the Act, and in addition to those powers and duties set forth in the Act and the Declaration, the Board of Directors shall have the powers and duties including, but not limited to, those enumerated below. Each Director individually and the Board of Directors collectively shall perform the duties and powers of the Board of Directors in good faith as a fiduciary of the Association, in a manner which the Director believes to be in the best interest of the Association and with the care of a person of ordinary prudence under similar circumstances, including, but not limited to, reasonable inquiry, skill and diligence.

(a) Duties:

(i) provide for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Elements and all property, real or personal, of the Association;

(ii) determine the Common Expenses and any other charges comprising the operating expenses of the Association, establish the amount of Monthly Assessments, as the same may increase or decrease, and assess the same against the Members in accordance with the provisions of the Declaration and these Bylaws;

(iii) levy and collect, in addition to Monthly Assessments, Special Assessments in amounts which the Board of Directors deems proper, whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies subject to the limitations specified in the Declaration;

(iv) use and expend any sums collected from Monthly Assessments and Special Assessments for the operation, maintenance, renewal, care and upkeep of the Common Elements;

(v) maintain the Common Elements;

(vi) maintain the Reserve Fund out of Monthly Assessments;

(vii) pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Member or otherwise properly chargeable to the Member;

(viii) collect delinquent Assessments against any Unit and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforce the terms of the Declaration and the observance of the Regulations by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;

(ix) establish operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time and as may be consistent with GAAP;

(x) adopt a budget for each fiscal year which shall contain estimates of the costs and expenses of the Association and the proposed Monthly Assessments which initial budget and certain increases shall be approved by Owners as required in the Declaration;

(xi) cause a complete review of the books and accounts of the Association to be made by a competent independent public accountant at the end of each fiscal year and at any other time or times deemed necessary;

(xii) maintain accounting records in accordance with GAAP; and

(xiii) make and enforce compliance with the Rules and Regulations relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Regulations which the Board of Directors shall adopt, and to amend the same from time to time as and when approved by appropriate resolutions which shall be binding on the Owners, tenants and occupants of the Units, their successors in title and assigns. A copy of the Rules and Regulations and copies of any amendments thereto shall be delivered or mailed to each Owner and any tenant or occupant of an Owner's Unit promptly upon the adoption thereof.

(b) Powers:

(i) employ and dismiss personnel of the Association, and purchase or arrange for those services, machinery, equipment, tools, materials and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common Elements;

(ii) subject to Section 7.16 of these Bylaws, enter into contracts for professional management of the Property and the Association, at such prices and upon such terms as may be determined by the Board of Directors, to perform those duties and services which the Board of Directors may lawfully delegate;

(iii) employ or retain and receive advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. The Board of Directors shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (A) one or more officers or employees of the Association whom the Board of Directors reasonably believes to be reliable and competent in the matter presented; (B) counsel, public accountants or other Persons as to the matters which the Board of Directors reasonably believes to be within the professional or expert competence of this Person; and (C) a committee of the Board of Directors duly designated in accordance with law, as to matters within its designated authority, which committee the Board of Directors reasonably believes to merit confidence. The Board of Directors shall not be considered to be acting in good faith if it has knowledge concerning the matter in question that would cause this reliance to be unwarranted;

(iv) name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor to this trustee (each of which shall be referred to herein as the "Insurance Trustee"), to be given exclusive authority to negotiate losses under any policy providing property or liability insurance coverage. The Association or any Insurance Trustee or substitute Insurance Trustee designated by the Association shall have the exclusive power to act as attorney-in-fact for the purpose of

purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;

(v) establish depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited. Withdrawal of monies shall be only by check signed by those Persons who are authorized by the Board of Directors to sign checks on behalf of the Association;

(vi) invest monies of the Association in any investments which the Board of Directors deems to be reasonably prudent;

(vii) borrow and repay monies and give notes, mortgages or other security upon the terms which are deemed reasonable by the Board of Directors;

(viii) acquire by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so;

(ix) grant and reserve easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common Elements and to amend the Map to show such interests;

(x) establish a form of estoppel certificate acceptable to the Association for delivery to prospective purchasers and lenders and an appropriate charge for furnishing such certificate and

(xi) do all things incidental and necessary to the accomplishment of the foregoing.

The duties and powers imposed on the Board of Directors by this Section 7.13 shall not be amended so as to reduce, eliminate or expand any duties or powers of the Board of Directors without the affirmative vote of at least sixty-seven percent (67%) of the votes of the Members voting at the meeting called to consider such amendment.

Notwithstanding anything contained in the Bylaws or the Act or the Texas Non-Profit Corporation Act, neither the Association, nor the Board of Directors, have the right, power or duty to file claims or institute litigation, subject to the mediation and arbitration provisions of the Declaration on its own behalf or on behalf of any of the Owners with respect to the Units owned by any Owner. The Owner shall be the sole persons with such authority, in no event shall this provision limiting the right and power of the Association and Board of Directors be amended by the Members, without the written approval of the Gal Gate, LLC, the Declarant, or the successors or assigns of such Declarant.

**Section 7.14 Conduct of Directors and Officers.** No Member, Director, officer or representative of the Association shall be personally liable for debts or liabilities of the

Association. The Directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, bad faith, intentional wrongful acts or as otherwise provided in the Declaration. Such Directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association.

**Section 7.15 Annual Budget and Assessments.** Copies of the Budget for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least 30 days prior to the beginning of each fiscal year of the Association and shall be available to all Members for inspection during regular business hours at the Association's office. If the Budget is subsequently amended before the Assessments are made, a copy of the amended Budget shall also be distributed and made available for inspection. Reserves shall include reasonable amounts to be credited, allocated or accumulated for replacement of those Common Area improvements or facilities that require replacement, renovation or rehabilitation periodically. Subject to the provisions of the Declaration, nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time and in its sole discretion, to levy a Special Assessment in the event that the budget as originally adopted shall appear to be insufficient to pay the cost of the operation or management of the Property or in the event of emergencies.

**Section 7.16 Management Certificate.** If the Board of Directors determine that it is in the best interest of the Association to hire a Manager for the Property in accordance with Section 7.16 of these Bylaws, the Association shall record in the County a certificate, signed and acknowledged by an officer of the Association stating:

- (a) the name of the Condominium;
- (b) the name of the Association;
- (c) the location of the Condominium;
- (d) the recording data for the Declaration;
- (e) the mailing address of the Association, or the name and mailing address of the Person managing the Association; and
- (f) other information the Association considers appropriate.

Such certificate shall be recorded within 30 days after the Association receives notice of a change in any of the information listed in (a) through (e) herein.

**Section 7.17 Manager.** To facilitate management of the Property and the administration of the Association, the Board of Directors may delegate to a Manager responsibility for matters of a routine nature, renewable by agreement of the parties thereto for successive one year periods only, and shall be subject to termination by either party with or without cause and without payment of a termination fee upon not more than 30 days' prior written notice. After a Manager has been appointed, no decision by the Association to manage its own affairs without a Manager shall be effective unless and until approved by an affirmative

vote of the Members holding not less than sixty-seven percent (67%) of the votes allocated by the Declaration.

**Section 7.18 Open Meeting.** Meetings of the Members of the Association and the Board of Directors shall be open to all Members. Subject to applicable law, the Board of Directors shall have the right to adjourn a meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, or enforcement actions, or upon the request of an affected party, or to consider matters that are confidential in the opinion of the Board of Directors; provided, however, the Board of Directors shall announce the general nature of the business to be considered in such executive session prior to adjourning the meeting.

## **ARTICLE VIII Officers**

**Section 8.1 Officers.** The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and Treasurer. The same individual may not hold the offices of President and Secretary. The Secretary may be eligible to hold the office of Treasurer. The President and Secretary shall not be representatives of the same entity Owner. The President and Treasurer must also be Directors. The Secretary need not be a Director.

**Section 8.2 Election.** Except as set forth herein, the officers of the Association shall be elected annually by the Board of Directors at the organizational meeting held pursuant to Section 7.5 of these Bylaws and shall hold office until their successors are elected or appointed by the Board of Directors; provided that each officer may be removed, either with or without cause, whenever in the best interest of the Association, and his successor elected by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors called for that purpose. The President and Secretary shall each serve for a term of two (2) years and the remaining officers shall serve for a term of one (1) year. The Board of Directors may, from time to time, appoint other officers who, in its judgment, are necessary. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of this notice or any later time specified therein; unless specified therein, the acceptance of a written resignation shall not be necessary to make it effective.

**Section 8.3 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

**Section 8.4 President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members of the Association and the Board of Directors. The President shall have the general powers and duties usually vested in the office of the president of a community Association, including, but not limited to, the power to appoint committees from the Members from time to time as he may deem appropriate to assist in the conduct of the affairs of the Association provided, however, no such committee shall have the right to exercise the full authority of the Board of Directors. The President shall be an ex-officio member of all standing committees, if any. The President shall execute deeds, contracts and

other instruments, in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

**Section 8.5 Vice President.** In the absence of the President or in the event of the President's inability or refusal to act, a Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all of the restrictions upon the President. Any Vice President shall have only such powers and perform only such duties as the Board of Directors may from time to time prescribe or as the officers may from time to time delegate.

**Section 8.6 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members of the Association and record all votes and the minutes of all meetings and Proceedings, including resolutions, in the Minute Book. The Secretary shall perform the same duties for any committees when required. The Secretary shall have charge of the Minute Book, the records of the Association and any papers which the Board of Directors shall direct the Secretary to keep; shall perform all duties incident to the office of Secretary, including, but not limited to, the sending of notice of meetings to the Members, the Directors and members of any committees, and shall perform any other duties which may be prescribed by these Bylaws or by the Board of Directors or the President. The Secretary shall also have custody of the corporate seal and shall affix the same to any instrument requiring it when authorized by the Board of Directors and shall attest or certify the same when appropriate. The Secretary shall keep, or cause to be kept, at the principal office of the Association, a membership register showing the following: (a) the names and addresses of all Directors; (b) the names and addresses of all Members as provided by the Members; (c) the Unit that is owned by each Member; and (d) the vote of each Member. The Secretary shall prepare, execute and cause the recordation of amendments to the Declaration on behalf of the Association except when the preparation, execution and recordation thereof shall be delegated by the Board of Directors to another officer or agent of the Association. Nothing shall prohibit the functions of the Secretary to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Secretary shall not relieve the Secretary from any responsibility related to overseeing and reviewing any duties performed by the agent.

**Section 8.7 Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name of and to the credit of the Association in those depositories which may be designated from time to time by the Board of Directors. The Treasurer shall disburse the funds of the Association, as the Treasurer may be ordered to do from time to time by the Board of Directors or by the President, and shall render to the President and the Directors at the regular meetings of the Board of Directors, or whenever they or either of them shall require, an account of his transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The

delegation of the duties of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the agent.

**Section 8.8 Compensation.** The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

**ARTICLE IX**  
**Indemnification of Directors,**  
**Officers and Other Authorized Representatives**

**Section 9.1 General Indemnification.** The Association shall indemnify an individual who was, is or is threatened to be made a named defendant or respondent in a Proceeding because the individual is or was a Director only if it is determined in accordance with Section 9.5 of these Bylaws that the individual: (1) conducted himself or herself in good faith; (2) reasonably believed: (a) in the case of conduct in such individual's Official Capacity as a Director of the Association, that his conduct was in the Association's best interests, and (b) in all other cases, that his conduct was at least not opposed to the Association's best interests; and (3) in the case of any criminal Proceeding, had no reasonable cause to believe that his conduct was unlawful.

**Section 9.2 Personal Interest or Liability.** A Director shall not be indemnified by the Association as provided in Section 9.1 of these Bylaws for obligations resulting from a Proceeding: (1) in which the Director is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the individual's Official Capacity; or (2) in which the individual is found liable to the Association, except to the extent permitted in Section 9.4 of these Bylaws.

**Section 9.3 Final Judgment Required.** The termination of a Proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the individual did not meet the requirement set forth in Section 9.1 of these Bylaws. An individual shall be deemed to have been found liable in respect of any claim, issue or matter only after the individual shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom or after such judgment becomes final and non-appealable.

**Section 9.4 Limited Indemnification.** An individual may be indemnified by the Association as provided in Section 9.1 of this Article IX against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses, including court costs and reasonable attorneys fees actually incurred by the individual in connection with a Proceeding; but if the individual is found liable to the Association or is found liable on the basis that personal benefit was improperly received by the individual, the indemnification (1) is limited to reasonable expenses actually incurred by the individual in connection with the Proceeding including court costs and reasonable attorneys' fees, and (2) shall not be made in respect of any Proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his or her duty to the Association.



**Section 9.5 Determination of Indemnification.** A determination of indemnification under Section 9.1 of these Bylaws must be made: (1) by a majority vote of a quorum of Directors who at the time of the vote are not named defendants or respondents in the Proceeding; (2) if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the Proceeding; or (3) by special legal counsel selected by the Board of Directors or a committee of the Board of Directors by vote as set forth in subsection (1) or (2) of this Section 9.5 or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

**Section 9.6 Authorization and Determination of Reasonableness of Expenses.** Authorization of indemnification and determination as to reasonableness of expenses (including court costs and reasonable attorneys' fees) must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification, and determination as to reasonableness of expenses (including court costs and reasonable attorneys' fees) must be made in the manner specified by subsection (3) of Section 9.5 of these Bylaws for the selection of special legal counsel. A provision contained in the Articles, these Bylaws, a resolution of the Board of Directors or an agreement that makes mandatory the indemnification described in Section 9.1 of these Bylaws shall be deemed to constitute authorization of indemnification in the manner required herein, even though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

**Section 9.7 Success in a Proceeding.** The Association shall indemnify a Director against reasonable expenses (including court costs and reasonable attorneys' fees) incurred by him in connection with a Proceeding in which he is a named defendant or respondent because he is or was a Director if he has been wholly successful on the merits or otherwise, in the defense of the Proceeding.

**Section 9.8 Court Determination of Indemnification.** If, upon application of a Director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the Director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section 9.1 of these Bylaws or has been found liable in the circumstances described in Section 9.2 of these Bylaws, the Association shall indemnify the Director to such further extent as the court shall determine; but if the individual is found liable to the Association or is found liable on the basis that personal benefit was improperly received by the individual, the indemnification shall be limited to reasonable expenses (including court costs and reasonable attorneys' fees) actually incurred by the individual in connection with the Proceeding.

**Section 9.9 Advancing Director Expenses.** Reasonable expenses (including court costs and reasonable attorneys' fees) incurred by a Director who was, is, or is threatened to be made a named defendant or respondent in a Proceeding may be paid or reimbursed by the Association in advance of the final disposition of the Proceeding and without the determination specified in Section 9.5 of these Bylaws or the authorization or determination specified in

Section 9.6 of these Bylaws after the Association receives a written affirmation by the Director of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article IX and a written undertaking by or on behalf of the Director to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or it is ultimately determined that indemnification of the Director against expenses (including court costs and reasonable attorneys fees) incurred by him in connection with that Proceeding is prohibited by Section 9.4 of these Bylaws. A provision contained in the Articles, these Bylaws, a resolution of the Board of Directors, or an agreement that makes mandatory the payment or reimbursement permitted under this Section 9.9 shall be deemed to constitute authorization of that payment or reimbursement.

**Section 9.10 Repayment of Expenses by Director.** The written undertaking required by Section 9.9 of these Bylaws must be an unlimited general obligation of the Director but need not be secured. It may be accepted without reference to financial ability to make repayment.

**Section 9.11 Witness Expenses.** Notwithstanding any other provision of this article, the Association shall pay or reimburse expenses (including reasonable attorneys' fees) incurred by a Director in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

**Section 9.12 Officer Indemnification.** An officer of the Association shall be indemnified by the Association as and to the same extent provided for a Director by Sections 9.1, 9.6, 9.7 and 9.8 of these Bylaws and is entitled to seek indemnification under those Sections to the same extent as a Director. The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to an officer, employee or agent of the Association to the same extent that it may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to Directors under this Article IX.

**Section 9.13 Indemnification of Others.** The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to individuals who are not or were not officers, employees, or agents of the Association but who are or were serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust or other enterprise to the same extent that it may indemnify and advance expenses (including court costs and reasonable attorneys fees) to Directors under this Article IX.

**Section 9.14 Advancing Expenses for Others.** The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to an officer, employee, agent, or individual identified in Section 9.13 of these Bylaws and who is not a Director to such further extent, consistent with law, as may be provided by the Articles, these Bylaws, general or specific action of the Board of Directors or contract or as permitted or required by common law.

**Section 9.15 Insurance Authorized.** The Association shall, to the extent economically practicable, purchase and maintain insurance or another arrangement on behalf of any individual who is or was a Director, officer, employee or agent of the Association or who is or was serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee,

employee, agent, or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Association would have the power to indemnify him against that liability under this Article IX. Without limiting the power of the Association to procure or maintain any kind of insurance or other arrangement, the Association may, for the benefit of individuals indemnified by the Association: (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligations by grant of a security interest or other lien on the assets of the Association; or (4) establish a letter of credit, guaranty or surety agreement. The insurance or other arrangement may be procured, maintained or established within the Association or with any insurer or other individual deemed appropriate by the Board of Directors, regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Association. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in an arrangement shall be conclusive, and the insurance or arrangement shall not be voidable and shall not subject the Directors approving the insurance or arrangement to liability, on any ground, regardless of whether Directors participating in the approval are beneficiaries of the insurance or arrangement. Notwithstanding the provisions of this Section 9.15 in the event of any conflict between the provisions of this Section 9.15 and the provisions of the Declaration, the provisions of the Declaration shall control.

**Section 9.16 Indemnification Prohibited by the Declaration.** Notwithstanding any provision of this Article IX to the contrary, no indemnification shall be authorized by or provided under this Article IX for any act in violation of any Legal Requirements.

## **ARTICLE X**

### **Association Books and Records**

The Association shall keep or cause to be kept (a) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of Section 82.157 of the Act, (b) the plans and specifications used to construct the Condominium, (c) the name and mailing address of each Owner of a Unit; (d) voting records, proxies and correspondence relating to all amendments to the Declaration and (e) the minutes of all meetings of the Members of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Owners, Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with GAAP, consistently applied, and shall be audited at least once a year by an independent certified public accountant. If requested in writing by a Member or Mortgagee, the Association shall furnish such requesting Member or Mortgagee copies of the audited financial statements of the Association within 90 days following the end of each fiscal year of the Association. The Board of Directors shall further make available for the inspection by Members, Mortgagees, and their respective agents and representatives, during normal business hours, the current version of the Governing Documents and all other documents affecting the Association, the Owners, or the Property, as well as all amendments thereto and revisions thereof. Declarant shall furnish copies of the information set forth in this Article X to the Association on the date the first Unit is conveyed to

an Owner. For purposes of this paragraph, "available" shall mean available for inspection, upon reasonable advance request of not less than 24 hours, during regular business hours at the office of the Association or the office of a Manager of the Association. The cost of any copies shall be reimbursed to the Association at a rate set by the Board of Directors.

**ARTICLE XI**  
**Dissolution and Termination**

Upon dissolution of the Association, the real and personal property of the Association shall be distributed pursuant to the provision of the Articles or, if no such provision is made, distributed to one or more organizations which are exempt from taxation under Section 501(c)(3) of the Code.

**ARTICLE XII**  
**Miscellaneous**

**Section 12.1 Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.

**Section 12.2 Amendments to Bylaws.**

(a) These Bylaws may be amended from time to time by the affirmative vote in person or by proxy of seventy-five percent (75%) of all of the Members voting at a meeting called to consider such amendment, and affirmative approval of Declarant with respect to amendment of Section 7.13.

(b) Members must be given notice of the meeting required by Section 12.2(a) of these Bylaws not less than ten or more than 20 days preceding the date of the meeting. Any such notice shall include the specific amendment or other change proposed to be made to these Bylaws.

**Section 12.3 Inspection of Bylaws.** The Association shall keep in its principal office the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members during normal business hours.

**Section 12.4 Membership Minutes.** The membership register and the Minute Book shall be open to inspection within one business day of demand of any Member during the normal business hours of the Association, for purposes reasonably related to the interests of such Member.

**Section 12.5 Construction.** Number and gender as used in these Bylaws shall extend to and include both singular and plural and all genders as the context and construction require.

Adopted as of 5-9, 2006.

  
Secretary of the Association

**SECOND RESTATED AND AMENDED  
BYLAWS OF EIBANDS LUXURY CONDOMINIUM ASSOCIATION, INC.**

These Second Restated and Amended Bylaws of Eibands Luxury Condominium Association, Inc. ("Second Restated Bylaws") supersede, replace and amend, in their entirety all previous bylaws of Eibands Luxury Condominium Association, Inc, including Eibands Luxury Condominium Association, Inc. Bylaws, Restated and Amended Bylaws, and any amendments thereto, previously adopted, as of the date these Second Restated Bylaws are adopted. In the event of any inconsistency between the terms and provisions of these Second Restated Bylaws and any previous Bylaws, the terms and conditions of these Second Restated Bylaws shall control. All references herein to the "Bylaws" of the Association shall mean and refer to these Second Restated Bylaws.

**ARTICLE I  
Name and Address**

**Section 1.1 Name.** The name of this Association shall be **EIBANDS LUXURY CONDOMINIUMS ASSOCIATION, INC.**

**Section 1.2 Address.** The Association shall be at the place to be designated by the Board of Directors, subject to change upon notice to the Members of the Association.

**Section 1.3 Registered Agent.** The Association shall have and continuously maintain in the State of Texas a registered agent whose office is identical with such registered office as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical to the principal office in the State of Texas, and the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II  
Applicability**

These Bylaws shall be applicable to the Association. In accordance with the terms of the Declaration, all Members and any other Persons permitted to use the Common Elements shall be subject to these Bylaws and any rules and regulations adopted from time to time by the Board of Directors. Ownership of any Unit, or rental or occupancy of any portion of a Unit in the Property shall be conclusively deemed to mean that the Tenant or occupant has accepted, ratified and will comply with the Governing Documents.

**ARTICLE III  
Purpose**

The purpose of the Association is to protect and enhance the value of the Property, including, without limitation, providing from the management of the Common Elements. The Association does not contemplate pecuniary gain or profit to its Members as a result of membership in the Association.

**ARTICLE IV  
Definitions and Interpretation**

**Section 4.1 Definitions.** The following terms shall have the meanings set forth below. Any capitalized terms not expressly defined herein shall have the same meaning as defined in the Declaration.

**"Act."** The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001, et seq., as amended from time to time.

**"Articles."** The Certificate of Formation of Eibands Luxury Condominiums Association, Inc., as amended and filed in the Office of the Texas Secretary of State.

"Association." Eibands Luxury Condominiums Association, Inc., a Texas non-profit Corporation for the purposes of Section 9.1 of these Bylaws, any domestic or foreign successor entity of the Association in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Association by operation of law and in any other transaction in which the Association assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of Article IX of these Bylaws.

"Board of Directors." Those individuals serving as Board of Directors pursuant to Article VII of these Bylaws and their successors as duly elected and qualified from time to time.

"Code." The Internal Revenue Code of 1986, as amended.

"Common Expenses." Expenses for which the Association is responsible including; (i) the Expenses; (ii) those insurance coverages as may be maintained by the Association as described in the Declaration; (iii) professional services for the Association, such as management, accounting and legal services; and (iv) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation, management and administration of the Association and the Common Elements.

"Condominium." Eibands Luxury Condominiums formed pursuant to the Declaration.

"County." Galveston County, Texas.

"Declarant Control." The period commencing on the date of the Declaration and continuing until one hundred twenty (120) days after the date that deeds to not less than 75% of the Units have been recorded in the real property records of the County, subject, however to the provisions of Section 10.2.

"Declaration." The Condominium Declaration for EIBANDS LUXURY CONDOMINIUMS dated June 1, 2006, recorded in the Official Public Records of Real Property of Galveston County, Texas, under Clerk's File No. 2006037224, and all recorded amendments thereto, which shall be recorded in the real property records of the County.

"Director." A member of the Board of Directors, and for the purposes of Article IX of these Bylaws any individual who is or was a director of the Association and any individual who, while a director of the Association, is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

"GAAP." Generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board.

"Governing Documents." Individually and collectively the Act, the Declaration, the Articles, the Bylaws, and the Rules and Regulations.

"Improvements." The Buildings and their infrastructure, and the pavement, fencing, landscaping, facilities, Systems, and man-made objects of every type, existing or in the future placed on the Property, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Lien Indebtedness." Any bona fide indebtedness, which is the result of an arm's-length negotiation secured by a lien or encumbrance upon an Owner's Unit.

"Majority Vote of the Members." Members in Good Standing holding, in the aggregate, a majority of the votes entitled to be cast by the Members in Good Standing present or voting by legitimate proxy at a called meeting at which a Quorum is present.

"Manager." Any experienced and professional manager or management company with whom the Association

contracts for the day-to-day management of either or both of the Property or the administration of the Association of the Condominium.

"Member in Good Standing." Has the meaning set forth in the Articles.

"Members." All present and future members of the Condominiums. The words "member" or "members" as used in these Bylaws means and shall refer to "Unit Owner" or "Unit Owners," as the case may be, as defined in the Declaration.

"Mortgagee." Any Person that is the holder, insurer or guarantor of Lien Indebtedness which has provided the Association with written notice of its name, address and the description of the Unit on which it holds Lien Indebtedness.

"Minute Book." The minute book of the Association, which shall contain the minutes of all annual and special meetings of the Members of the Association and the Board of directors and all resolutions of the Board of Directors.

"Official Capacity." (i) when used with respect to a Director, the office of director in the Association, and (ii) when used with respect to an individual other than a Director, the elective or appointive office in the Association held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Association, but (iii) both (i) and (ii) above do not include service for any other foreign or domestic Association or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any public or governmental body, agency or instrumentality and any fiduciary acting in such capacity on behalf of the foregoing.

"President." The officer of the Association having the duties described in Section 8.4 of these Bylaws.

"Proceeding." Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigative, any appeal in such an action, suit, or proceeding and any inquiry or investigation that could lead to such an action, suit or proceeding.

"Property." The Units and the Common Elements.

"Quorum." Has the meaning set forth in Section 5.2 of these Bylaws.

"Reserve Fund." A fund to be maintained by the Association to meet unforeseen expenditures of the Association or to purchase any additional equipment or services deemed necessary by the Association for operation of the Condominium subject to the provisions of the Declaration.

"Rules and Regulations." The rules and regulations of the Association to meet unforeseen expenditures of the Association or to purchase any additional equipment or services deemed necessary by the Association for operation of the Condominium subject to the provisions of the Declaration; and relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Rules and Regulations.

"Secretary." The officer of the Association having the duties described in Section 8.6 of these Bylaws.

"Treasurer." The officer of the Association having the duties described in Section 8.7 of these Bylaws.

"Unit." A physical portion of the Condominium that is designated for separate ownership or occupancy with the unrestricted right of ingress thereto and egress therefrom, together with an undivided interest, appurtenant to such Unit, in and to the Common Elements, and includes (i) all Systems which exclusively serve such Unit and (ii) the finish materials, fixtures and appliances contained in the Unit, but excludes (a) any of the Structure of the Building(s) in which

such Unit is located and (b) Systems which serve more than one Unit, all as subject to and further described in Section 82.052 of the Act.

**Section 4.2 Interpretation.** In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. If the Code is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Code with respect to nonprofit entities, it being the intention to preserve the status of the Association as a *bona fide* nonprofit entity.

## ARTICLE V Member

### Section 5.1 Membership.

(a) Each Owner shall automatically be a Member of the Association. The voting rights and procedures are set forth in the Declaration.

(b) In cases where more than one Person owns an interest in a Unit, all such Persons shall arrange among themselves for one of their number to exercise the voting rights herein established. In no event shall there be more than one vote for any Unit. If only one of the Persons is present at a meeting of the Association, that Person may cast that Unit's vote. If more than one of the Persons is present and after one Person casts the vote, another Person present makes prompt protest to the Person presiding over the meeting, such vote shall not be counted. Unless such Person can unanimously agree on such vote by the end of the meeting. Each Person owning a portion of the fee interest in a Unit may vote or register protest to the casting of votes by the other Persons owning portions of the fee interest in the same Unit through a proxy duly executed by such Member. A Member may not revoke a proxy except by giving actual written notice of revocation to the Person presiding over the meeting.

**Section 5.2 Affirmative Vote.** Members in Good Standing holding fifty percent (50%) of the aggregate votes entitled to be cast by the Members, represented at a meeting of the Members in person or by a legitimate proxy in a form approved by the Board of Directors, shall constitute a quorum for voting on matters brought before the Members at meetings called by the Board of Directors (a "Quorum"). The vote of the Majority Vote of the Members shall be the act of the Members. A vote may be cast either in person or by proxy, by Members in Good Standing. Notice and quorum requirements shall be as set forth herein. Cumulative voting shall not be permitted.

**Section 5.3 Membership List.** The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known address as provided by each Member. The list shall also show opposite each Member's name the address of the Unit owned. The list shall be revised by the Secretary to reflect changes in the ownership of the Units occurring prior to the date of the annual or special meeting. The list shall be open to inspection by all Members and other Persons lawfully entitled to inspect the list during regular business hours up to the date of the annual or special meeting. The Secretary shall also keep current and retain custody of the Minute Book. Membership of a Member in the Association shall automatically terminate when such Member ceases to be an Owner; provided, however, that such termination shall not release or relieve such Member from any liability or obligation under the Declaration that was incurred during such Member's period of ownership of a Unit.

**Section 5.4 Proxies.** Votes may be cast by written proxy or by ballot. Written proxies may be submitted by United States mail, delivered to the office of the Association, delivered directly to the Secretary or delivered in such other manner as directed by the Association. A proxy vote shall be defined as a written vote submitted by a Member which either states the specific vote of the Member with respect to the issues, resolutions or election being voted on by the Members at the annual or special meeting or which is written permission for the Board of Directors or a specific Director to exercise the Member's vote as the Board of Directors or the specific Director sees fit. A proxy shall be valid for the meeting specified in the proxy or any valid communication of such meeting. Each proxy shall be revocable unless otherwise expressly provided therein to be irrevocable. No proxy will be valid after 11 months from the date of its execution unless otherwise provided therein.



**ARTICLE VI**  
**Meetings of the Members of the Association**

**Section 6.1 Place of Annual and Special Meetings.** All annual and special meetings of the Members of the Association shall be held at the principal office of the Association or at another suitable and convenient place permitted by law and fixed by the Board of Directors from time to time and designated in the notices of the meetings.

**Section 6.2 Date of Annual Meetings.** The first annual meeting of the Members of the Association shall be held within one year of its formation. Thereafter, annual meetings of the Members of the Association shall be held in January each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business that may properly come before the meeting.

**Section 6.3 Notice of Annual Meetings.** The Secretary shall mail notices of annual meetings to each Member directed to the most recent post office address provided to the Association by such Member, as shown on the records of the Association, by regular mail, postage prepaid. The notice shall be mailed not less than ten or more than 40 days before the date of the meeting and shall state the date, time and place of the meeting, the purpose or purposes thereof and the items on the agenda, including the specific nature of any proposed amendment or change to the Governing Documents.

**Section 6.4 Special Meetings.** A special meeting of the Members of the Association may be called by the President, a majority of the Directors, or upon presentation to the Secretary of a petition stating the specific purpose of the special meeting, which petition has been signed by members having not less than twenty-five percent (25%) of the aggregate votes entitled to be cast at such meeting.

**Section 6.5 Notice of Special Meetings.** The Secretary shall mail notice of any special meeting of the Members of the Association to each Member in the manner provided in Section 6.3 of these Bylaws. The notice shall state the same items required by Section 6.3 of these Bylaws for notices of annual meetings. No business shall be transacted at any special meeting except as stated in the notice hereof.

**Section 6.6 Quorum.** At any duly convened meeting of the Members of the Association, a quorum shall be present if at least fifty percent (50%) of the Members in Good Standing are present in person or proxy at the beginning of the meeting.

**Section 6.7 Agenda.** The agenda at all meetings of the Members of the Association shall include: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) approval of the minutes of the preceding meeting; (d) reports of officers and committees; (e) election of directors, if applicable; (f) unfinished business; (g) new business; and (h) adjournment.

**Section 6.8 Action without Meeting by Written Ballot.** Any action which may be taken by the vote of the Members at a regular or special meeting, other than the election of Directors, may be taken without a meeting if done in compliance with relevant provisions of the Texas Non-Profit Corporation Act. If an action is taken without a meeting, the Board of Directors shall distribute a written ballot to every member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the proposal at a regular or special meeting authorizing the action.

**Section 6.9 Administration of Affairs.** Subject to the provisions of the Governing Documents the Board of Directors shall govern the Association.

**ARTICLE VII**  
**The Board of Directors**

**Section 7.1 Authority; Number of Directors.**

(a) Except as is provided below, Declarant shall have the right to appoint and remove members of the Board of Directors during the period of Declarant Control. If Declarant voluntarily surrenders control prior to the termination of the period of Declarant Control, Declarant may require that specified actions of the Board of Directors be subject to Declarant approval until the expiration of the period of Declarant Control. The initial Directors shall be three (3) in number and shall be those Directors named in the Articles. The initial Directors shall serve until their successors are elected and qualified.

(b) Each Director shall be a Member, or in the case of an entity ownership of a Unit, a duly authorized agent or representative of the entity owner. The entity owner shall be designated as the Director in all correspondence or other documentation setting for the names of the Directors.

(c) Not later than one hundred twenty (120) days after Declarant has conveyed to Owners other than Declarant title to fifty percent (50%) of the Units, an election shall be held by the Association, pursuant to these Bylaws, for the election of not less than one third of the members of the Board of Directors by Owners other than Declarant.

(d) At least thirty (30) days prior to the termination of the period of Declarant Control, the Association shall elect at least three (3) directors to the Board of Directors pursuant to the Bylaws, of which one will be elected for a three year term, one will be elected for a two year term and one will be elected for a one year term, such terms to commence as of the date on which the period of Declarant Control terminates. Thereafter, the Board shall consist of not less than three (3) nor more than five (5) directors. Within those limits, the Board may change the number of directors. No decrease may shorten the term of a director.

**Section 7.2 Terms of Directors and Compensation.** Except as otherwise set forth herein with respect to the terms of the initial Directors elected by the Members following the termination of the period of Declarant Control, each Director shall serve for a term of two (2) years and may serve an unlimited number of consecutive terms. Each Director shall continue to hold office until his successor is elected and qualified. The Directors shall serve without compensation for such service.

**Section 7.3 Vacancies on the Board of Directors.** If the office of any elected Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Owner which elected the Director for whom the office is now vacant, shall choose a successor within ten days of the vacancy. The successor Director shall fill the unexpired term of the directorship being vacated. At the expiration of the term of his position on the Board of Directors, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws.

**Section 7.4 Removal of Directors by Members.** Elected Directors may be removed, with or without cause, by the Member which elected the Director at any time; provided notice of the removal has been given to the entire Board of Directors at any time; and the successor Director is elected in accordance with Section 7.3 of these Bylaws.

**Section 7.5 Organizational Meeting of the Board of Directors.** No later than twenty (20) days following each of (a) the establishment of the Association, and (b) each annual meeting of the Members of the Association, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with Section 7.8 of these Bylaws, except for the initial meeting, which shall be called by Declarant.

**Section 7.6 Place of Meeting.** All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Board of Directors or by written consent of all of the Directors. A special meeting of the Board of Directors may be held by any method of communication, including electronic and telephonic, by which each Director may hear and be heard by every other Director, and any such meeting may involve consideration of any action, including any action involving a vote on a fine,

damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue.

**Section 7.7 Regular Board of Directors Meeting.** Regular meetings of the Board of Directors may be held at any time and place permitted by law as from time to time may be determined by the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, electronic mail, facsimile or by the United States mail, with postage prepaid, directed to him at his last known post office address, as the same appears on the records of the Association, at least ten but not more than 40 days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting. Special meetings of the Board of Directors may be held by conference telephone; provided, however, at any regular meeting of the Board of Directors, not more than one Director may participate by telephone.

**Section 7.8 Special Meetings of the Board of Directors.** Special meetings of the Board of Directors may be called by the President on his own accord or by the President or the Secretary upon the written request of any one Director, on three days' prior notice to each Director.

**Section 7.9 Waiver of Notice.** Before any meeting of the Board of Directors, whether regular or special, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving the required notice. All written waivers shall be filed in the Minute Book of the Association or made a part of the minutes of the meeting. Attendance by a Director at any meeting of the Board of Directors shall likewise constitute a waiver by him of the required notice. If all Directors are present at any meeting of the Board of Directors, no notice of the meeting shall be required and any business may be transacted at the meeting except as prohibited by law or these Bylaws.

**Section 7.10 Directors Quorum.** At all duly convened meetings of the Board of Directors, two (2) Directors must be present to constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws subject to the limitations set forth in the Declaration. The acts of a majority of the Directors present at the meeting at which a quorum is present shall be the acts of the Board of Directors.

**Section 7.11 Consent in Writing.** Any action by the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an issue, may be taken without a meeting if all of the Directors shall unanimously consent in writing to the action. Such written consent shall be filed in the Minute Book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.

**Section 7.12 Records.** The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept and to present a general report thereof to the Members at each annual meeting of the Members of the Association or at any special meeting of the Members of the Association where a general report is requested in writing by at least twenty-five percent (25%) of the Allocated Interests.

**Section 7.13 Powers and Duties.** Subject to the Governing Documents, the Board of Directors shall have and exercise all powers and duties necessary for the proper administration of the affairs of the Association. In the performance of its duties as the governing body of the Association, subject to limitations set forth in the Declaration, the Board of Directors shall have all powers enumerated in Section 82.102 of the Act, and in addition to those powers and duties set forth in the Act and the Declaration, the Board of Directors shall have the powers and duties including, but not limited to, those enumerated below. Each Director individually and the Board of Directors collectively shall perform the duties and powers of the Board of Directors in good faith as a fiduciary of the Association and with the care of a person of ordinary prudence under similar circumstances, including, but not limited to, reasonable inquiry, skill and diligence.

(a) Duties:

- (i) provide for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Elements and all property, real or personal, of the Association;
- (ii) determine the Common Expenses and any other charges comprising the operating expenses of the Association, establish the amount of Monthly Assessments, as the same may increase or decrease, and assess the same against the Members in accordance with the provisions of the Declaration and these Bylaws;
- (iii) levy and collect, in addition to Monthly Assessments, Special Assessments in amounts which the Board of Directors deems proper, whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies subject to the limitations specified in the Declaration;
- (iv) use and expend any sums collected from Monthly Assessments and Special Assessments for the operation, maintenance, renewal, care and upkeep of the Common Elements;
- (v) maintain the Common Elements;
- (vi) maintain the Reserve Fund out of Monthly Assessments;
- (vii) pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusively of any taxes or assessments levied against any Member or otherwise properly chargeable to the Member.
- (viii) collect delinquent Assessments against any Unit and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforce the terms of the Declaration and the observance of the Regulations by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;
- (ix) establish operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time and as may be consistent with GAAP;
- (x) adopt a budget for each fiscal year which shall contain estimates of the costs and expenses of the Association and proposed Monthly Assessments which initial budget and certain increases shall be approved by Owners as required in the Declaration;
- (xi) cause a complete review of the books and accounts of the Association to be made by a competent independent public accountant at the end of each fiscal year and at any other time or times deemed necessary;
- (xii) maintain accounting records in accordance with GAAP; and
- (xiii) make and enforce compliance with the Rules and Regulations relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Regulations which the Board of Directors shall adopt, and to amend the same from time to time as and when occupants of the Units, their successor in title and assigns. A copy of the Rules and Regulations and copies of any amendments thereto shall be delivered or mailed to each Owner and any tenant or occupant of an Owner's Unit promptly upon the adoption thereof.

(b) Powers:

- (i) employ and dismiss personnel of the Association, and purchase or arrange for those services, machinery, equipment, tools, materials and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common Elements;

(ii) subject to Section 7.16 of these Bylaws, enter into contracts for professional management of the Property and the Association, at such prices and upon such terms as may be determined by the Board of Directors, to perform those duties and services which the Board of Directors may lawfully delegate;

(iii) employ or retain and receive advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. The Board of Directors shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (A) reasonably believes to be reliable and competent in the matter presented; (B) counsel, public accountants or other Persons as to the matters which the Board of Directors reasonably believes to be within the professional or expert competence of this Person; and (C) a committee of the Board of Directors duly designated in accordance with law, as to matters within its designated authority, which committee the Board of Directors reasonably believes to merit confidence. The Board of Directors shall not be considered to be acting in good faith if it has knowledge concerning the matter in question that would cause this reliance to be unwarranted;

(iv) name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor to this trustee (each of which shall be referred to herein as the "Insurance Trustee"), to be given exclusively authority to negotiate losses under any policy providing property or liability insurance coverage. The Association or any Insurance Trustee or substitute Insurance Trustee designated by the Association shall have the exclusive power to act as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;

(v) establish depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited. Withdrawal of monies shall be only by check signed by those Persons who are authorized by the Board of Directors to sign checks on behalf of the Association;

(vi) invest monies of the Association in any investments which the Board of Directors deems to be reasonably prudent;

(vii) borrow and repay monies and give monies and give notes, mortgages or other security upon the terms with are deemed reasonable by the Board of Directors;

(viii) acquire by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so;

(ix) grant and reserve easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common Elements and to amend the Map to show such interests;

(x) establish a form of estoppel certificate acceptable to the Association for delivery to prospective purchasers and lenders and appropriate charge for furnishing such certificate and

(xi) do all things incidental and necessary to the accomplishment of the foregoing.

The duties and powers imposed on the Board of Directors by this Section 7.13 shall not be amended so as to reduce, eliminate or expand any duties or powers of the Board of Directors without the affirmative vote of at least sixty-

seven percent (67%) of the votes of the Members voting at the meeting called to consider such amendment.

Notwithstanding anything contained in the Bylaws or the Act or the Texas Non-Profit Corporation Act, neither the Association, nor the Board of Directors, have the right, power or duty to file claims or institute litigation, subject to the medication and arbitration provisions of the Declaration on its own behalf or on behalf of any of the Owners with respect to the Units owned by any Owner. The Owner shall be the sole persons with such authority, in no event shall this provision limiting the right and power of the Association and Board of Directors be amended by the Members, without the written approval of the Gal Gate, LLC, the Declarant, or the successors or assigns of such Declarant.

**Section 7.14 Conduct of Directors and Officers.** No Member, Director, officer or representative of the Association shall be personally liable for debts or liabilities of the Association. The Directors and officer of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, bad faith, intentional wrongful acts or as otherwise provided in the Declaration. Such Directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association.

**Section 7.15 Annual Budget and Assessments.** Copies of the Budget for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least 30 days prior to the beginning of each fiscal year of the Association and shall be available to all Members for inspection during regular business hours at the Associations office. If the Budget is subsequently amended before the Assessments are made, a copy of those amended Budget shall also be distributed and made available for inspection. Reserves shall include reasonable amounts to be credited, allocated or accumulated for replacement of those Common Area improvements or facilities that require replacement, renovation or rehabilitation periodically. Subject to the provisions of the Declaration, nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time and in its sole discretion, to levy a Special Assessment in the event that the budget as originally adopted shall appear to be insufficient to pay the cost of the operation or management of the Property or in the event of emergencies.

**Section 7.16 Management Certificate.** If the Board of Directors determine that it is in the best interest of the Association to hire a Manager for the Property in accordance with Section 7.16 of these Bylaws, the Association shall record in the County a certificate, signed and acknowledged by an officer of the Association stating:

- (a) the name of the Condominium;
- (b) the name of the Association;
- (c) the location of the Condominium;
- (d) the recording data for the Declaration;
- (e) the mailing address of the Association, or the name and mailing address of the Person managing the Association; and
- (f) other information the Association considers appropriate.

Such certificate shall be recorded 30 days after the Association receives notice of a change in any of the information listed in (a) through (e) herein.

**Section 7.17 Manager.** To facilitate management of the Property and the administration of the Association, the Board of Directors may delegate to a Manager responsibility for matters of a routine nature, renewable by agreement of the parties thereto for successive one year periods only, and shall be subject to termination by either party with or without cause and without payment of a termination fee upon not more than 30 days prior written notice. After a Manager has been appointed, no decision by the Association to manage its own affairs without a Manager shall be effective unless and until approved by an affirmative vote of the Members holding not less than sixty-seven percent

(67%) of the votes allocated by the Declaration.

**Section 7.18 Open Meeting.** Meetings of the Members of the Association and the Board of Directors shall be open to all Members. Subject to applicable law, the Board of Directors shall have the right to adjourn a special meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, or enforcement actions, upon the request of an affected party, or to consider matters that are confidential in the opinion of the Board of Directors; provided, however, the Board of Directors shall announce the general nature of the business to be considered in such executive session prior to adjourning the meeting.

## ARTICLE VIII

### Officers

**Section 8.1 Officers.** The officers of the Association shall be a President, one or more Vice Presidents, a Secretary and Treasurer. The same individual may not hold the offices of President and Secretary. The Secretary may be eligible to hold the office of Treasurer. The President and Treasurer must also be Directors. The Secretary need not be a director.

**Section 8.2 Election.** Except as set forth herein, the officers of the Association shall be elected annually by the Board of Directors at the organizational meeting held pursuant to Section 7.5 of these Bylaws and shall hold office until their successors are elected or appointed by the Board of Directors; provided that each officer may be removed, either with or without cause, whenever in the best interest of the Association, and his successor elected by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors called for that purpose. The President and Secretary shall each serve for a term of two (2) years and the remaining officers shall serve for a term of one (1) year. The Board of Directors may, from time to time, appoint other officers who, in its judgment, are necessary. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of this notice or any later time specified therein; unless specified therein, the acceptance of a written resignation shall not be necessary to make it effective.

**Section 8.3 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

**Section 8.4 President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members of the Association and the Board of Directors. The President shall have the general powers and duties usually vested in the office of the president of a community Association, including, but not limited to, the power to appoint committees from the Members from time to time as he may deem appropriate to assist in the conduct of the affairs of the Association provided, however, no such committee shall have the right to exercise the full authority of the Board of Directors. The President shall be an ex-officio member of all standing committees, if any. The President shall execute deeds, contracts and other instruments, in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

**Section 8.5 Vice President.** In the absence of the President or in the event of the President's inability or refusal to act, a Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all of the restrictions upon the President. Any Vice President shall have only such powers and perform only such duties as the Board of Directors may from time to time prescribe or as the officers may from time to time delegate.

**Section 8.6 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members of the Association and record all votes and the minutes of all meetings and Proceedings, including resolutions, in the Minute Book. The Secretary shall perform the same duties for any committees when

required. The Secretary shall have charge of the Minute Book, the records of the Association and any papers which the Board of Directors shall direct the Secretary to keep; shall perform all duties incident to the office of Secretary, including, but not limited to, the sending of notice of meetings to the Members, the Directors and members of any committees, and shall perform any other duties which may be prescribed by these Bylaws or by the Board of Directors or the President. The Secretary shall also have custody of the corporate seal and shall affix the same to any instrument requiring it when authorized by the Board of Directors and shall attest or certify the same when appropriate. The Secretary shall keep, or cause to be kept, at the principal office of the Association, a membership register showing the following: (a) the names and addresses of all Directors; (b) the names and addresses of all Members as provided by the Members; © the Unit that is owned by each Member; and (d) the vote of each Member. The Secretary shall prepare, execute and cause the recordation of amendments to the Declaration on behalf of the Association except when the preparation, execution and recordation thereof shall be delegated by the Board of Directors to another officer or agent of the Association. Nothing shall prohibit the functions of the Secretary to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Secretary shall not relieve the Secretary from any responsibility related to overseeing and reviewing any duties performed by the agent.

**Section 8.7 Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name of and to the credit of the Association in those depositories which may be designated from time to time by the Board of Directors. The Treasurer shall disburse funds of the Association, as the Treasurer may be ordered to do from time to time by the Board of Directors or by the President, and shall render to the President and the Directors at the regular meetings of the Board of Directors, or whenever they or either of them shall require, an account of his transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the agent.

**Section 8.8 Compensation.** The officers of the Association shall serve without compensation except that they shall be entitled to reimburse for all expenses reasonably incurred in the discharge of their duties.

#### **ARTICLE IX Indemnification of Directors, Officers and Other Authorized Representatives**

**Section 9.1 General Indemnification.** The Association shall indemnify an individual who was, is or is threatened to be made a named defendant or respondent in a Proceeding because of the individual is or was a Director only if it is determined in accordance with Section 9.5 of these Bylaws that the individual: (1) conducted himself or herself in good faith; (2) reasonably believed: (a) in the case of conduct in such individual's Official Capacity as a Director of the Association, that his conduct was in the Association's best interests, and (b) in all other cases, that his conduct was at least not opposed to the Association's best interests; and (3) in the case of any criminal Proceeding, had no reasonable cause to believe that his conduct was unlawful.

**Section 9.2 Personal Interest or Liability.** A Director shall not be indemnified by the Association as provided in Section 9.1 of the Bylaws for obligations resulting from a Proceeding; (1) in which the Director is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the individual's Official Capacity; or (2) in which the individual is found liable to the Association, except to the extent permitted in Section 9.4 of these Bylaws.

**Section 9.3 Final Judgment Required.** The termination of a Proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the individual did not meet the requirement set forth in Section 9.1 of these Bylaws. An individual shall be deemed to have been found liable in a respect of any claim, issue or matter only after the individual shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom or after such judgment becomes final and non-



appealable.

**Section 9.4 Limited Indemnification.** An individual may be indemnified by the Association as provided in Section 9.1 of this Article IX against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses, including court costs and reasonable attorneys fees actually incurred by the individual in connection with a Proceeding; but if the individual is found liable to the Association or is found liable on the basis that personal benefit was improperly received by the individual, the indemnification (1) is limited to reasonable expenses actually incurred by the individual in connection with the Proceeding including court costs and reasonable attorney's fees, and (2) shall not be made in respect of any Proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of is or her duty to the Association.

**Section 9.5 Determination of Indemnification.** A determination of indemnification under Section 9.1 of these Bylaws must be made: (1) by a majority vote of a quorum of Directors who at the time of the vote are not named defendants or respondents in the Proceeding; (2) if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the Proceeding; or (3) by special legal counsel selected by the Board of Directors or a committee of the Board of Directors by vote as set forth in subsection (1) or (2) of this Section 9.5 or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

**Section 9.6 Authorization and Determination of Reasonableness of Expenses.** Authorization of indemnification and determination as to reasonableness of expenses (including court costs and reasonable attorney's fees) must be made in the same manner as the determination is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification, and determination as to reasonableness of expenses (including court costs and reasonable attorneys' fees) must be made in the manner specified by subsection (3) of Section 9.5 of these Bylaws for the selection of special legal counsel. A provision contained in the Articles, these Bylaws, a resolution of the Board of Directors or an agreement that makes mandatory the indemnification described in Section 9.1 of these Bylaws shall be deemed to constitute authorization of indemnification in the manner required herein, even though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

**Section 9.7 Success in a Proceeding.** The Association shall indemnify a Director against reasonable expenses (including court costs and reasonable attorneys' fees) incurred by him in connection with a Proceeding in which he is a named defendant or respondent because he is or was a Director if he has been wholly successful on the merits or otherwise, in the defense of the Proceeding.

**Section 9.8 Court Determination of Indemnification.** If, upon application of a Director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the Director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section 9.1 of these Bylaws or has been found liable in the circumstances described in Section 9.2 of these Bylaws, the Association shall indemnify the Director to such further extent as the court shall determine; but if the individual is found liable to the Association or is found liable on the basis that personal benefit was improperly received by the individual, the indemnifications shall be limited to reasonable expenses (including court costs and reasonable attorneys' fees) actually incurred by the individual in connection with the Proceeding.

**Section 9.9 Advancing Director Expenses.** Reasonable expenses (including court costs and reasonable attorneys' fees) incurred by a Director who was, is, or is threatened to be made a named defendant or respondent in a Proceeding may be paid or reimbursed by the Association in advance of the final disposition of the Proceeding and without the determination specified in Section 9.5 of these Bylaws or the authorization or determination specified in Section 9.6 of these Bylaws after the Association receives a written affirmation by the Director of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article IX and a written undertaking by or on behalf of the Director to repay the amount paid or reimbursed if it is ultimately determined that indemnification of the Director against expenses (including court costs and reasonable attorneys fees) incurred by him

in connection with that Proceeding is prohibited by Section 9.4 of these Bylaws. A provision contained in the Articles, these Bylaws, a resolution of the Board of Directors, or an agreement that makes mandatory the payment or reimbursement permitted under this Section 9.9 shall be deemed to constitute authorization of that payment or reimbursement.

**Section 9.10 Repayment of Expenses by Director.** The written undertaking required by Section 9.9 of these Bylaws must be an unlimited general obligation of the Director but need not be secured. It may be accepted without reference to financial ability to make repayment.

**Section 9.11 Witness Expenses.** Notwithstanding any other provision of this article, the Association shall pay or reimburse expenses (including reasonable attorneys' fees) incurred by a Director in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

**Section 9.12 Officer Indemnification.** An officer of the Association shall be indemnified by the Association as and to the same extent provided for a Director by Section 9.1, 9.6, 9.7 and 9.8 of these Bylaws and is entitled to seek indemnification under those Sections to the same extent as a Director. The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to an officer, employee or agent of the Association to the same extent that it may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to Directors under this Article IX.

**Section 9.13 Indemnification of Others.** The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to individuals who are not or were not officers, employees, or agents of the Association but who are or were serving at the request of the Association as Director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust or other enterprise to the same extent that it may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to Directors under this Article IX.

**Section 9.14 Advancing Expenses for Others.** The Association may indemnify and advance expenses (including court costs and reasonable attorneys' fees) to an officer, employee, agent, or individual identified in Section 9.13 of these Bylaws and who is not a Director to such further extent, consistent with law, as may be provided by the Articles, these Bylaws, general or specific action of the Board of Directors or contract or as permitted or required by common law.

**Section 9.15 Insurance Authorized.** The Association shall, to the extent economically practicable, purchase and maintain insurance or another arrangement on behalf of any individual who is or was a Director, officer, employee or agent of the Association or who is or was serving at the request of the Association as a Director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Association would have the power to indemnify him against that liability under this Article IX. Without limiting the power of the Association to procure or maintain any kind of insurance or other arrangement, the Association may, for the benefit of individuals indemnified by the Association; (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligations by grant of a security interest or other lien on the assets of the Association; or (4) establish a letter of credit, guaranty or surety agreement. The insurance or other arrangement may be procured, maintained or established within the Association or with any insurer or other individual deemed appropriate by the Board of Directors, regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Association. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangements and the identity of the insurer or other Person participating in an arrangement shall be conclusive, and the insurance or arrangements shall not be voidable and shall not subject the Directors approving the insurance or arrangement to liability, on any ground, regardless of whether Directors participating in the approval are beneficiaries of the insurance or arrangement. Notwithstanding the provisions of this Section 9.15 in the event of any conflict between the provisions of this Section 9.15 and the provisions of the

Declaration, the provisions of the Declaration shall control.

**Section 9.16 Indemnification Prohibited by the Declaration.** Notwithstanding any provision of this Article IX to the contrary, no indemnification shall be authorized by or provided under this Article IX for any act in violation of any Legal Requirements.

## ARTICLE X Assessments

**Section 10.1 Obligation to Pay Assessments.** As set forth in the Declarations, the Association shall possess the right, power, authority and obligation to establish a regular Monthly and Special Assessments as set forth in the Declarations. Each Owner is personally obligated to pay such Owner's share of all Assessments duly established pursuant to the Declarations to the Association. Monthly Assessments are *due* on the first day of every month and *past due* after the first day if unpaid; and a *late charge of \$25* is imposed on Monthly Assessments unpaid after the tenth day of the month, to the fullest extent allowed by law. Any Monthly or Special Assessments not paid within thirty (30) days of the date due shall bear an interest rate at the maximum lawful rate of interest under Texas law or, if no maximum lawful rate exists, the rate of 18% per annum. If any sums assessed by the Board pursuant to any provision of the Declaration and these Bylaws, remain unpaid after ten (10) days after the due date thereof, in addition to other actions and remedies that the Board is authorized to take, the Board may (i) elect to deny or restrict access to and/or use of the Property by the non-paying Owner (including their lessees and guests) and/or to discontinue providing any utilities that the Association commonly provides to all Units and pays for part of the Common Expenses, including but not limited to water from the common supply source or line to such Unit, to the fullest extent allowed by law; and/or (ii) elect to turn over any delinquency to an attorney for collection or enforcement. The collection process may include, without limitation, the filing of a lawsuit against Owner for all delinquent assessments. Owner, individually and/or jointly and severally, will be bound by any judgment or decree, to the extent permitted by law. If suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy, or other judicial proceeding, then Owner shall pay the Association all costs of collection and enforcement, including pre and post judgment interest, reasonable attorney's fees incurred by the Association and court costs, in addition to other amounts due.

**Section 10.2 Lien to Secure Payment of Assessments.** All sums assessed by the Board pursuant to any provision of the Declaration and these Bylaws, shall constitute a lien on such Unit, superior (prior) to all other liens and encumbrances, the Rents, if any, payable to Owner and Insurance Proceeds any Owner may be entitled to receive, to secure the payment of all Assessments, excepting only:

- (i) Tax and special assessment liens on the Unit in favor of any governmental assessing unit.
- (ii) All sums unpaid on a prior recorded first Mortgage, including all unpaid obligatory sums as may be provided by such encumbrance.
  - (a) If any assessment shall remain unpaid after 10 days after the due date thereof, such unpaid sums shall bear interest from and after the due date thereof at the maximum lawful rate of interest per annum and the Board of Directors may impose a late charge on such defaulting Unit Owner in an amount set by the Board from time to time to cover the extra cost and expense involved in handling such delinquent assessments.
  - (b) To evidence such lien, the Board shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Unit Owner of the Unit and a description of the Unit. Such a notice shall be signed by one of the Board of Directors, the Managing Agent, or Attorney-In-Fact and shall be recorded in the office of the County Clerk, Galveston County, Texas. Such lien may be enforced by foreclosure of the defaulting Unit Owner's Unit by the Association in like manner as a mortgage on real property, upon the recording of a notice or claim thereof. In any such foreclosure the Unit Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Unit Owner shall

also 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 Board of Directors shall have the power to bid on the Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

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

**Section 10.3. Holding of Funds.** All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder and under the Declaration against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners according to their percentage of ownership.

**Section 10.4 Alternative Actions.** As contemplated by the Declarations, nothing contained in these Bylaws shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

**Section 10.5 Discharge of Liens.** In addition to the provisions regarding mechanic's liens, and all indemnification by the Owner thereto, the Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorney's fees, incurred by reason of such lien.

## **ARTICLE XI Rules and Regulations**

**Section 11.1 Right of Entry.** An Owner shall grant the right of entry to the management agent or to any other person authorized by the Board of Directors or the Association in case of any emergency originating in or threatening his Unit, whether the Owner is present at the time or not. An Owner shall grant the right to the Association or its representatives, when so required, to enter his Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided the request for entry is at a time convenient to the Owner. In case of an emergency, such right of entry shall be immediate.

**Section 11.2 Rules and Regulations.** The Rules and Regulations are established for the mutual benefit, enjoyment and comfort of Owners, their lessees and guests, as defined in the Declaration and to further the successful operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Rules and Regulations. Owners are responsible for the observance of the Rules and Regulations by the members of their household, their lessees and their guests.

(a) **Attorney's Fees.** Any proceeding by the Association arising because of an alleged failure of an Owner to comply with the terms of the Declaration, By-Laws, or the Rules and Regulations, and as such documents are amended, shall entitle the Association to receive reasonable attorney's fees and court costs.

(b) **Keys.** A passkey must be furnished by the Owner to an officer of the Association or the management agent. If the lock is changed, a new passkey must be furnished.

(c) **Door Lock.** Replacement and additional locks may not be installed until one of the officers of the

Association or the management agent has been furnished with a key to all such locks so that entry to any Unit may be made during an emergency.

(d) **Fire Hazard.** No items which may create a fire hazard shall be kept or used in any Unit or the common areas.

(e) **Guests.** Residents shall be strictly responsible for the instruction of their guests as to the provisions of these Rules and Regulations.

The foregoing administrative rules and regulations may be withdrawn or modified by affirmative vote of a majority of the Owners at a regular or special meeting. Additional administrative rules and regulations may be promulgated by the affirmative vote of a majority of either the Owners or the Board of Directors at a regular meeting or a special meeting. Such administrative rules and regulations shall not take effect until thirty (30) days after adoption.

#### **ARTICLE XII Association Books and Records**

The Association shall keep or cause to be kept (a) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of Section 82.157 of the Act, (b) the plans and specifications used to construct the Condominium, (c) the name and mailing address of each Owner of a Unit; (d) voting records, proxies and correspondence relating to all amendments to the Declaration and (e) the minutes of all meetings of the Members of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Owners, Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with GAAP, consistently applied, and shall be audited at least once a year by an independent certified public accountant. If requested in writing by a Member or Mortgagee, the Association shall furnish such requesting Member or Mortgagee copies of the audited financial statements of the Association within 90 days following the end of each fiscal year of the Association. The Board of Directors shall further make available for the inspection by Members, Mortgagees, and their respective agents and representatives, during normal business hours, the current version of the Governing Documents and all other documents affecting the Association, the Owners, or the Property, as well as all amendments thereto and revisions thereof. Declarant shall furnish copies of the information set forth in this Article X to the Association on the date the first Unit is conveyed to an Owner. For purposes of this paragraph "available" shall mean available for inspection, upon reasonable advance request of not less than 24 hours, during regular business hours at the office of the Association or the office of a Manager of the Association. The cost of any copies shall be reimbursed to the Association at a rate set by the Board of Directors.

#### **ARTICLE XIII Dissolution and Termination**

Upon dissolution of the Association, the real and personal property of the Association shall be distributed pursuant to the provision of the Articles or, if no such provision is made, distributed to one or more organizations which are exempt from taxation under section 501(c)(3) of the Code.

#### **ARTICLE XIV Miscellaneous**

**Section 14.1 Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.

**Section 14.2 Amendments to Bylaws.**

(a) These Bylaws may be amended from time to time by the affirmative vote in person or in proxy of seventy-five percent (75%) of all of the Members voting at a meeting called to consider such amendment, and affirmative

approval of Declarant with respect to amendment of Section 7.13.

(b) Members must be given notice of the meeting required by Section 12.2(a) of these Bylaws not less than ten or more than 20 days preceding the date of the meeting. Any such notice shall include the specific amendment or other change proposed to be made to these Bylaws.

**Section 14.3 Inspection of Bylaws.** The Association shall keep in its principal office the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members during normal business hours.

**Section 14.4 Membership Minutes.** The membership register and the Minute Book shall be open to inspection within one business day of demand of any Member during the normal business hours of the Association, for purposes reasonably related to the interests of such Member.

**Section 14.5 Construction.** Number and gender as used in these Bylaws shall extend to and include both singular and plural and all genders as to the context and construction require.

ADOPTED on December 10, 2009, by the Members.

  
\_\_\_\_\_  
President of the Association

BRAD BALLARD  
Printed name

  
\_\_\_\_\_  
Secretary of the Association

HOWARD PALMER III  
Printed name