

BY-LAWS

OF

BY THE SEA COUNCIL OF CO-OWNERS, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation shall be BY THE SEA COUNCIL OF CO-OWNERS, INC. This shall be a non-profit corporation formed under the Texas Non-profit Corporation Act, and it is sometimes referred to in these By-laws as the "Council" or the "corporation". The principal office of the corporation shall be located at 7310 Seawall Boulevard, Galveston, Texas, 77550, but meetings of members may be held at such other place within the State of Texas as may be designated by the Board of Directors from time to time.

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ARTICLE II

DEFINITIONS

The definitions contained in the Condominium Declaration for BY THE SEA, a condominium apartment project in Galveston County, Texas (referred to in these By-laws as the "Declaration") are adopted for these By-laws, and all defined terms and words used herein, unless otherwise indicated, shall be used in the same manner as such terms or words are used in the Declaration dated the 15TH day of SEPTEMBER, 1975, filed for record in the Condominium Records of Galveston County, Texas, on the _____ day of _____, 1975, and recorded in Book _____, Page _____, in the Office of the County Clerk of Galveston County, Texas, to which Declaration and said record thereof reference is here made for all purposes.

ARTICLE III

MEMBERSHIP

1. Composition. - Each Owner of an Apartment Unit, including Developer, shall by virtue of such ownership automatically be a member of the Council and shall remain a member thereof until such time as his total ownership ceases for any reason, at which time his membership in the Council shall also automatically cease. Membership in the Council shall be appurtenant to and shall automatically follow the ownership of each Apartment Unit, and upon any transfer of ownership howsoever caused or brought about, the new Owner shall automatically be and become a member of the Council. No certificates of membership shall be issued. It shall be the obligation of each Owner to furnish satisfactory evidence to the Board of Directors of the ownership of his Apartment at the time his ownership is acquired.

2. Voting Rights. - The aggregate number of votes for all members of the Council shall be one hundred (100) which shall be proportionately divided among the Unit Owners in accordance with and in direct proportion to their respective percentage of ownership interest in the common elements. If any person, including Developer, shall own

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more than one (1) Apartment Unit, then his representation for voting purposes shall be determined by his aggregate ownership interest in the common elements so that he may exercise the voting rights allocated to each Apartment Unit owned by him. In the event any Apartment is jointly owned by two (2) or more persons, then the person or persons owning more than fifty (50) per cent. interest in such Unit shall exercise the full voting rights of such Apartment Unit. The Developer through any of its officers, directors or representatives may exercise all the votes allowed to the unsold Apartment Units while owned by Developer, its successors or assigns.

3. Annual Meetings. - An annual meeting of the members for the purpose of voting on such matters or transacting such business as may properly come before the meeting shall be held on the FIRST day of SEPTEMBER of each year at 10:00 o'clock A.M. at the principal office of the Council in Galveston, Texas, or on such other date, time and place as the Board of Directors shall annually determine and fix by notice to the members.

4. Special Meetings. - Special meetings of the members may be called by the President of the Council or by the Board of Directors or by Owners of Apartment Units who in the aggregate represent at least 25% ownership interest in the common elements as set out in the Declaration. Notices of special meetings shall be in writing and may be mailed or personally delivered, and shall state the date, time, place and general purpose of the meeting. No business shall be transacted at any special meeting which is not generally stated in the notice, unless Unit Owners representing at least 51 votes, either in person or by proxy, consent to the transaction of such business. All special meetings shall be held at a convenient location in the City of Galveston, Texas, to be determined by the person or persons calling the meeting.

5. Proxy. - At any meeting of members, a member entitled to vote thereat may vote by proxy, executed in writing by the member or his duly authorized representative and filed with the Secretary at such meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Every proxy shall be revocable.

6. Notice of Meetings. - The President or the members of the Council as to special meetings called by him or them, and the Board of Directors as to annual or special meetings called by it, shall cause written notices stating the place, day and hour of any such meeting to be delivered personally or by mail to each member not less than five (5) nor more than thirty (30) days before the date of such meeting. In case of a special meeting, or when required by statute, the Declaration or these By-laws, the purpose or purposes for which such meeting is called shall be generally stated in the notice. If mailed, the notice of meeting shall be deemed to have been delivered when deposited in the U. S. Mail, addressed to the member at his address last appearing on the books or records of the Council, or supplied by such member to the Council for the purpose of notices. All members attending any meeting shall be deemed to have received proper notice of such meeting.

7. Quorum. - The presence in person or by proxy of members holding 51% of the total votes of the membership shall constitute a quorum at such meeting. If a quorum is present at any meeting of

members, unless otherwise expressly provided for by statute, the Articles of Incorporation, the Declaration or these By-laws, all questions voted upon shall be decided by a simple majority of the valid votes cast, including adjournment of the meeting from time to time without further notice. If a quorum is not present, the members entitled to vote thereat shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum aforesaid shall be present or represented.

8. Waiver of Notice. - Written waiver of notice of any meeting signed by the member or members entitled to such notice, whether before or after the time of the meeting stated therein, shall be equivalent to the giving of such notice.

9. Action Without Meeting. - Any action required to be taken or any action which may be taken at any meeting of the members, may be taken without a meeting if a written consent, setting forth the action so taken shall be signed by all of the members entitled to vote upon the subject matter thereof and recorded in the records of the Council, whereupon the same shall have the same effect as though taken at a formal meeting of the members.

10. Sundays and Holidays. - If any day fixed in these By-laws for a meeting of the members shall fall on a Sunday or a legal Holiday then such meeting of the members shall be held at the same time and place on the next day thereafter ensuing which is not a Sunday or a legal Holiday. No meeting of members shall be called for a day which is a Sunday or a legal Holiday.

11. Legal Entities. - Members of the Council which are legal entities other than natural persons may be directly represented at any meeting of the members through any of their officers or other representatives as they may designate without execution of a proxy.

ARTICLE IV

BOARD OF DIRECTORS

1. Number and Term. - The affairs of the Council shall be managed by a Board of Directors (hereinafter called the "Board") to initially consist of three (3) Directors, each of whom shall serve for a term of two (2) years and until his successor is duly elected and qualified. At the end of the term of the initial Directors the Board shall consist of nine (9) Directors or such number as may from time to time be specified by Amendment to these By-laws, but in no case less than three (3), to be elected by the members as provided for in the succeeding Article. The Directors to be elected by the members as aforesaid, shall each serve for a term of two (2) years and until his successor is duly elected and qualified.

2. Resignations. - Any Director may resign his office at any time by giving written notice of his resignation to the President of the Council, and any such resignation shall be effective on the effective date stated in such notice.

3. Vacancies. - Any vacancy occurring in the Board, including the initial Board, shall be filled for the unexpired term by majority vote of the remaining Directors, although they may be less than a quorum.

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4. Quorum. - At all meetings of Directors the presence of a majority of the Directors shall constitute a quorum, and unless otherwise provided for or required by statute or in these By-laws, all questions at any meeting at which a quorum is present, shall be determined by a majority of the votes cast. If less than a quorum is present at any meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

5. Regular Meetings. - A regular annual meeting of the Board shall be held without notice, other than the notice hereby given, immediately after and at the same place as the annual meeting of the members. The Board may provide by Resolution the time and place of the holding of additional regular meetings of the Board without other notice than such Resolution.

6. Special Meetings. - Special meetings of the Board may be called by or at the request of the President or by or at the request of one-third (1/3) of the number of Directors then in office. The person or persons authorized to call such special meeting of the Board may fix the date, time and place for such meetings. Written notice of special meetings shall be given at least three (3) days prior to the date of meeting by personal delivery or by mail or telegram addressed to the address of each Director as last shown by the records of the Council. If mailed, such notice shall be deemed delivered as of the date when deposited in the U. S. Mail, Postage Prepaid. Each notice shall briefly set out the purpose of the meeting, and the time, date and place of the meeting.

7. Waiver of Notice. - Before or at or after any meeting of the Board any Director may verbally or in writing waive notice of the time, date, place and purpose of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be deemed as a waiver of the required notice of such meeting. If all Directors are present at any meeting of the Board, no notice thereof shall be required and any business may be transacted at such meeting.

8. No Compensation. - Directors as such shall not receive or be entitled to any pay or compensation for their services as Directors, but nothing herein shall be construed to preclude or prevent any Director from serving the Council in any other capacity, and receiving compensation therefor.

9. Written Consent. - Any action required by law or in these By-laws to be taken at a meeting of the Board, or any action which may or could be taken at any regular or special meeting of the Directors, may be taken without a meeting if a consent in writing, setting forth the actions so taken shall be signed by all of the Directors and recorded in the records of the Board, whereupon the same shall have the same effect as though taken at a meeting of the Directors.

ARTICLE V.

ELIGIBILITY, NOMINATION AND ELECTION OF DIRECTORS

1. Eligibility. - Except as hereinafter provided, the Directors must be members of the Council. The exceptions to the foregoing eligibility requirement are (i) the initial Directors named in the Articles of Incorporation, (ii) persons appointed to fill the unexpired term of any initial Director, and (iii) if any member of the

Council is a corporation, partnership, trust or other legal entity, then a Director may be an officer, Director, partner, trustee or beneficiary of any such member of the Council. Any Director who is required to be a member of the Council and who ceases to be a member for any reason or who is otherwise no longer eligible to be a Director may be removed from office by majority vote of the remaining Directors.

2. Nominations. - Nominations for election to the Board of Directors shall be made by a nominating committee, except that nominations may also be made from the floor at any annual meeting of the members of the Council at which Directors are to be elected. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more members of the Council who may, but need not be members of the Board. The nominating committee shall be appointed by the Board prior to each annual meeting of the members of the Council at which Directors are to be elected, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at such annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of Directors to be elected.

3. Election. - Election to the Board of Directors shall be by secret written ballot. At such election the members of the Council or their proxies may cast in respect to each vacancy the votes which they are entitled to exercise under the provisions of the Declaration and these By-laws. The persons receiving the highest number of votes shall be elected. Cumulative voting shall not be permitted. The first election of Directors by the members of the Council shall be held at the annual meeting of the members of the Council on or next following the date of the expiration of the two-year term of the initial Directors.

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ARTICLE VI

AUTHORITY, POWERS, AND DUTIES OF THE BOARD OF DIRECTORS

The Board of Directors shall manage and administer the affairs of the Council and shall have all such duties, rights, powers and authority given to it by all applicable laws, and statutes of the State of Texas, the Declaration or these By-laws and as may from time to time be delegated to it by the Council, in addition to the following:

- (a) To elect officers of the Council.
- (b) To manage and administer the affairs of the Council and the common elements and common interests of the project property and the Unit Owners.
- (c) To keep or cause to be kept sufficient books and records with a detailed account of the receipts and expenditures affecting or concerning the common elements, the common expenses and the administration of the condominium regime established by the Declaration. Both the books and vouchers accrediting the entries thereon shall be available for examination by all members of the Council at convenient hours on work days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and shall be audited at least once a year by an auditor outside of the organization, as provided for in the Condominium Act of the State of Texas.
- (d) To engage the services of a manager or management agent who shall manage and operate the common elements for all Unit Owners, upon such terms and for such compensation and with such specific duties and authority as the Board may approve or as may be specified in the contract of employment executed by an officer of the Council pursuant to authority of the Board of Directors in behalf of all Unit Owners. The compensation paid to the manager or the management agent shall be a common expense of all Unit Owners.
- (e) To formulate and enforce reasonable policies, rules and regulations from time to time to govern the use, management and operation of the common elements.
- (f) To plan and adopt from time to time an annual budget for the estimated annual common expenses for the maintenance, repair, upkeep, protection, preservation, insurance, replacement, management, and administration of the common elements, as well as for other common insurance and other common services or benefits, and to provide the manner of assessing and collecting from the Unit Owners their respective prorata shares of such estimated common expenses all as more particularly provided for in the Declaration.
- (g) To make and enter into arrangements, contracts or agreements with the Board of Directors or other governing bodies or boards of other condominium regimes for common services, benefits or purposes.
- (h) To provide for the designation, hiring and removal of employees and other personnel, including bookkeepers, accountants

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and attorneys, and to engage or contract for the services of others, and in general to make purchases of labor, materials and/or services for the repair, upkeep, maintenance, replacement, protection, insurance, management or administration of the common elements and other common interests.

(i) In general, the Board shall have all such duties, rights and authority to do all such acts and things as are not by said Condominium Act or other law or the Declaration or these By-laws directed to be done or exercised directly by the Unit Owners or members of the Council, which shall be necessary or reasonably required for the successful and orderly administration, management and operation of the condominium regime established by the Declaration to which these By-laws pertain.

ARTICLE VII.

OFFICERS

1. Enumeration of Offices. - The principal offices of the Council shall be a President and one or more Vice-Presidents, a Secretary, and one or more Assistant Secretaries, and a Treasurer, and such other officers as the Board may from time to time appoint. The President and the Vice-Presidents shall at all times be members of the Board of Directors. Other officers need not be members of the Board of Directors or members of the Council. The office of Secretary and Treasurer may be held by the same person at the same time.

2. Election of Officers. - The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

3. Term. - The officers of the Council shall be elected or appointed annually by the Board of Directors and each officer shall hold office for one (1) year and until his successor has been elected or appointed, unless he shall sooner resign or shall be removed or otherwise disqualified to serve.

4. Special Appointments. - The Board may elect to appoint such other officers as the affairs of the Council may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

5. Removal and Resignation. - Any officer may be removed from office without cause at any time by majority vote of the Board of Directors. Any officer may resign at any time by giving written notice of resignation to the President or Secretary of the Council, and any such resignations shall take effect on the effective date specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6. Vacancies. - Vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

7. Multiple Offices. - The office of Secretary and Treasurer may be held by the same person at the same time, otherwise no person shall simultaneously hold more than one office, except in the case of special offices created pursuant to paragraph 4. of this Article.

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8. No Compensation. - The officers shall serve without any pay or compensation for services as such, except that if the management agent or manager holds any office he may be paid for his services as management agent or manager, including performance of the duties of his office. Nothing herein, however, shall be construed to preclude or prevent any officer from serving the Council in any other capacity and receiving compensation therefor.

9. Duties of Officers. - The duties of the officers are as follows:

(a) President: The President shall preside at all meetings of the members of the Council and of the Board of Directors at which he shall be present; he shall have all the general powers and duties which are usually vested in the office of President of a non-profit corporation under the laws of the State of Texas.

(b) Vice-President: The Vice-President or Vice-Presidents, at the request of the President or in his absence or during his inability to act, shall perform the duties and exercise the functions of the President, and when so acting shall have the powers of the President. The Vice-President or Vice-Presidents shall have such other powers and perform such other duties as may be assigned to him or them by the Board.

(c) Secretary: The Secretary shall keep the minutes of all meetings of members of the Council and of the Board of Directors in books provided for that purpose; he shall see to it that all notices are duly given in accordance with the provisions of the By-laws or as required by law or the Declaration; he shall be custodian of the records and corporate seal of the Council, and in general he shall perform all duties incident to the office of a Secretary of a non-profit corporation under the laws of the State of Texas, and such other duties as from time to time may be assigned to him by the Board of Directors or the President.

(d) Assistant Secretary: The Assistant Secretary shall perform the duties of Secretary upon direction or in the absence of the Secretary.

(e) Treasurer: The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Council and shall deposit or cause to be deposited in the name of the Council all monies or other valuable effects in such banks, trust companies or other depositories as shall, from time to time be selected by resolution of the Board of Directors. He shall also render to the President and to the Board of Directors, whenever requested, an account of the financial condition of the Council and in general he shall perform all of the duties incident to the office of a Treasurer of a non-profit corporation under the laws of the State of Texas, and such other duties as may be assigned to him by the Board of Directors.

ARTICLE VIII

BOOKS AND RECORDS

The books, records and papers of the Council shall at all times during reasonable business hours be subject to inspection by any member of the Council. The Declaration, the Articles of Incorporation, and the By-laws of the Council shall be available for inspection by any member of the Council at the principal office of the Council where copies may be purchased at reasonable cost.

ARTICLE IX

CORPORATE SEAL

The Board of Directors may adopt and have a corporate seal for the Council which shall be in such form and with such wording as the Board may determine.

ARTICLE X

INDEMNIFICATION OF OFFICERS AND DIRECTORS

1. The Council shall indemnify any Director or officer or former Director or former Officer of the Council for expenses and costs (including attorneys fees) actually and necessarily incurred by him in connection with any claim asserted against him, by action in Court or otherwise, by reason of his being or having been such Director or Officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect to the matter in which indemnity is sought.

2. If the Council has not fully indemnified him, the Court in the proceedings in which any claim against any such Director or Officer, or former Director or former Officer, has been asserted, or any Court having the requisite jurisdiction of an action instituted by such Director or Officer, or former Director or former Officer on his claim of indemnity, may assess indemnity against the Council, its receiver or trustee, for the amount paid by any such Director or former Director or Officer or former Officer in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the Council), and any expenses and costs (including attorneys fees) actually and necessarily incurred by him in connection therewith to the extent that the Court shall deem reasonable and equitable, provided, nevertheless, that indemnity may be assessed under this Article only if the Court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter for which indemnity is sought.

ARTICLE XI

AMENDMENTS

These By-laws may be amended from time to time at any annual or special meeting of the Council called for that purpose at which a quorum of members of the Council is present by a majority vote of the members present and voting in person or by proxy. The members of the Council may delegate to the Board of Directors the power to alter, amend, or repeal these By-laws or to adopt new By-laws. The amendments to these By-laws need not be filed for record, and it shall be the duty and obligation of all persons interested in these By-laws to inquire from the Secretary of the Council whether any amendments or new By-laws have been adopted.

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CONDOMINIUM DECLARATION

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FOR
BY THE SEA

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STATE OF TEXAS
COUNTY OF GALVESTON

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made this the 15TH day of SEPTEMBER, 1975, by HIS LAND CORPORATION, a Texas corporation, having its principal office in Harris County, Texas, hereinafter referred to as "Developer", pursuant to and in accordance with the provisions of the Condominium Act of the State of Texas, for the purpose of establishing a condominium regime in respect to the land below described and all improvements thereon and to be constructed thereon, to-wit:

Description of Land

A part of Lots 125 and 126 of Section One of the Trimble and Lindsey Survey of Galveston Island, in Galveston County, Texas, and part of an abandoned 50 foot roadway lying between said Lots 125 and 126, known as 73rd Street, and being more particularly described as follows:

BEGINNING at a 1 inch iron rod corner located in the Southeasterly line of Stewart Road (based on a 100.0 foot right-of-way) said corner also being located in the common line between Lots 114 and 125 of the above mentioned Trimble and Lindsey Survey, Section One;

THENCE South 22 deg. 40' 00" West along the Southeasterly line of Stewart Road, a distance of 633.48 feet to a point of curvature of a curve having a radius of 1482.72 feet;

THENCE following the above mentioned curve to the right a distance of 11.10 feet to a point for corner, said point being the beginning point of this survey;

THENCE South 54 deg. 26' 08" East a distance of 559.96 feet to a point for corner, said point being located in the Northerly line of the Galveston County concrete retaining wall which is also known as the Galveston Seawall;

THENCE South 58 deg. 12' 37" West along the Northerly line of the abovementioned concrete retaining wall a distance of 331.72 feet to a point for corner;

THENCE North 31 deg. 47' 23" West a distance of 175.0 feet to a point;

THENCE North 47 deg. 01' 33" West a distance of 242.03 feet to a point for corner, said point also being in the Southeasterly line of the aforementioned Stewart Road;

THENCE following a curve to the left having a central angle of 8 deg. 06' 54" and radius of 1482.72 feet along the Southeasterly line of the aforementioned Stewart Road, a distance of 210.0 feet to the PLACE OF BEGINNING and containing 2.756 acres of land, SAVE AND EXCEPT out of and from the above described property all oil, gas and other minerals outstanding in other parties and/or reserved by Developer's predecessors in title as reflected by instrument of record in Volume 911, Page 496 in the Office of the County Clerk, Galveston County, Texas, and subject to all restrictive covenants or conditions as reflected by instrument recorded in Volume 2449, Page 702 in the Office of the County Clerk of Galveston County, Texas, to the extent that the same affect the above described property or any part thereof and are still valid, in effect and enforceable.

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W I T N E S S E T H:

WHEREAS, in pursuance of a plan for the construction and development of a condominium project to be known and designated as BY THE SEA, the Developer, being the owner in fee simple of the tract of land hereinabove described, except as and subject to the matters above stated, which land is hereinafter referred to as the "project land", has improved and developed the said project land by constructing thereon a twelve-story, multi-unit apartment building, various carport buildings and other structures, improvements, facilities and appurtenances thereto; and,

WHEREAS, the Developer intends by this Declaration and the recodation hereof to submit said project land and all structures and other improvements thereon and to be constructed or placed thereon to the provisions of and the condominium regime established by the Condominium Act of the State of Texas, so as to thereby establish a Condominium Regime under and as authorized by said Act in respect to said land and all structures and other improvements thereon and to be constructed and placed thereon, as hereinafter more particularly defined, described and provided for:

NOW, THEREFORE, the Developer hereby makes the following Declarations as to the definitions, divisions, descriptions, restrictions, covenants, limitations, conditions, rights, privileges, obligations and liabilities which shall apply to, govern, control, and regulate the sale, re-sale or other disposition, encumbrance, acquisition, ownership, use, occupancy and enjoyment of the project property and all parts thereof and the separate freehold estates hereby established, hereby specifying and agreeing that the provisions and contents of this Declaration shall be and constitute covenants to run with the land and shall be binding on Developer, its successors and assigns and grantees and all subsequent owners of all or any part of said project property and their grantees, successors, heirs, devisees, executors, administrators or assigns, to-wit:

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1. DEFINITIONS. - As herein used, unless the context otherwise requires:

(a) "ACT" means the Condominium Act of the State of Texas, as now existing or hereafter amended from time to time.

(b) "DECLARATION" means this instrument and the by-laws and all other Exhibits attached hereto by the recordation of which the project property is submitted to the provisions of the Act, and such Declaration as from time to time lawfully amended.

(c) "BY-LAWS" means the By-laws set out on EXHIBIT "A" of this Declaration which shall govern the administration of the condominium regime hereby established in accordance with the provisions and requirements of the Act, and such By-laws as from time to time hereafter lawfully amended.

(d) "PROJECT LAND" means the land itself above described excluding the improvements thereon.

(e) "PROJECT PROPERTY" means all the project land and all improvements, buildings structures, facilities, fixtures and equipment now or hereafter constructed, placed or erected therein or thereon, and all easements, rights, hereditaments and appurtenances thereto in anywise belonging or appertaining, submitted to the provisions of the Act.

(f) "APARTMENT BUILDING" means the twelve-story, multi-unit building located on the project land and containing the 104 condominium apartment spaces to be individually and separately owned, depicted as Building A on the survey plat attached as EXHIBIT "B" hereto.

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(g) "APARTMENT" means an enclosed space consisting of one (1) or more rooms occupying all or part of a floor in a building of one (1) or more floors or stories for condominium ownership, having as its boundaries the interior surfaces of the perimeter walls, floors, ceilings and the exterior surfaces of balconies and terraces, and includes both the portions of the building so described and the air space so encompassed, excepting common elements.

(h) "COMMON ELEMENTS" means and includes all of the project property, except the individual Apartments which are to be individually and separately owned and the elements belonging thereto.

(i) "GENERAL COMMON ELEMENTS" means and includes all of the common elements, except the limited common elements.

(j) "LIMITED COMMON ELEMENTS" means and includes the parking spaces and storage lockers, one of each of which is assigned in the Declaration for the exclusive use of the Apartment to which they are assigned.

(k) "UNIT" or "APARTMENT UNIT" means an Apartment together with the undivided interest in the common elements allocated and appurtenant to that Apartment for individual and separate ownership under the Act, and all rights and privileges appertaining thereto as provided for in the Declaration.

(l) "OWNER" or "CO-OWNER" means the person or persons whose estates or interests individually, jointly or collectively, aggregate fee simple ownership of an Apartment Unit, provided, however, that any such person or group of persons who hold any such estate or interest solely as security for the performance of an obligation shall not be deemed an Owner solely on account of such security.

(m) "PERSON" means a natural individual, corporation, partnership, trust or other legal entity or any combination thereof capable of holding title to real estate.

(n) "MAJORITY OF UNIT OWNERS" means the Owner or Owners of Apartment Units whose aggregate undivided percentage of ownership interest in the common elements is more than fifty per cent (50%).

(o) "COUNCIL OF CO-OWNERS" (sometimes simply referred to in the Declaration as the "Council") means the organization or association of all co-owners which shall be incorporated as a non-profit corporation under the laws of the State of Texas, the name of which corporation shall be BY THE SEA COUNCIL OF CO-OWNERS, INC.

(p) "MORTGAGEE" means the beneficiary under a mortgage, deed of trust or other written instrument which constitutes a lien against an Apartment Unit to secure the payment of an indebtedness.

(q) "PARKING SPACE" means a covered parking space which constitutes part of the limited common elements and has a numerical designation corresponding to the numerical designation of the Apartment to which it is assigned for the exclusive use of the owner and/or occupant of such Apartment as provided for in the Declaration.

(r) If any word or phrase which is defined in the Act is not defined in this Declaration, then the definition of such words or phrases as appearing in the Act are hereby adopted for the purposes of this Declaration. All words or phrases which are not defined in the

Act or in this Declaration are intended to have their usual and customary meaning according to the context in which they appear.

2. SUBMISSION OF PROJECT PROPERTY TO THE ACT. - The Developer as Owner in fee simple of the project property, as such ownership is above set out and defined, in order to create, adopt and establish a condominium project and a plan of condominium ownership in respect thereto, hereby submits the project property to the condominium regime established by the Condominium Act of the State of Texas and the provisions thereof, as now existing and as may be hereafter amended. The Developer expressly intends and declares through the recordation of this Declaration its desire to submit the property to the Condominium Regime established by said Act.

3. SURVEY PLAT OF PROJECT LAND. - The project land hereinabove described is depicted on the survey plat attached hereto as EXHIBIT "B", which plat shows the location, boundaries, and dimensions of the project land and the location of the Apartment Building (Building A) and the covered parking spaces located thereon.

4. THE APARTMENT BUILDING. - The Apartment Building located on the project land and constituting a part of the project property, submitted to provisions of the Act, and in this Declaration referred to as "Building A" is basically designed as a twelve-story steel frame, glass and concrete building. The entire first floor of this building constitutes part of the general and limited common elements, such as offices, lobbies, recreation areas, rooms for various equipment and facilities, storage lockers, and other common elements as shown on the survey plat attached as Exhibit "C" hereto. The building contains a total of 104 Apartments which are located on the second through twelfth floors hereinafter more particularly described.

5. CONDOMINIUM OWNERSHIP. - The Developer, in pursuance of said plan of condominium ownership for the project property, does hereby covenant and agree that it hereby divides the project property into the following separate freehold estates, to-wit:

(a) Each of the one-hundred four (104) individual apartment spaces in the Apartment Building shall constitute a separate freehold estate for individual ownership. The boundaries of each such apartment space shall be and are the interior surfaces of the perimeter walls, floors, ceilings and the exterior surfaces of the balconies belonging thereto, and such apartment includes both the portions of the building so described and the air space so encompassed, excepting common elements. The individual ownership of each Apartment shall also include the following elements and items, except that such elements and items shall be deemed to be part of the building as a whole or the common elements for the purposes of any blanket, hazard or casualty insurance policies hereinafter mentioned and the coverage and protection afforded thereunder, to-wit: the interior non-bearing and non-supporting dividing walls and partitions, cabinets, shelves, closets, interior and exterior doors, the finished perimeter walls, floors and ceilings, including carpeting or other floor covering or finish and wall paper or other wall covering or finish, the individual lighting and electrical fixtures and appliances, the individual kitchen and bath room fixtures, equipment, plumbing and appliances, such as, but not limited to, cooking ranges, range hoods, refrigerators, sinks, dishwashers, garbage disposals, ovens, water closets, lavatories, shower stalls, bath tubs, medicine cabinets and similar fixtures and equipment, the individual air conditioning units and systems for space cooling and heating, and

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the appurtenances thereto, the individual hot water heaters, and all other items, facilities, equipment or elements which are designed and intended solely for the benefit of and to exclusively serve a particular apartment in or to which the same are located or attached, and are not designed or intended for the benefit, use, support, service or enjoyment of any other Apartment or the common elements or any part thereof.

(b) The undivided interest in the common elements herein allocated to each individual Apartment shall constitute a freehold estate; and it is hereby covenanted and stipulated that each such undivided interest in the common elements shall be held and owned together with and may not be sold, conveyed or otherwise disposed of or encumbered separately from the individual Apartment to which it is allocated.

6. DESCRIPTION OF APARTMENTS. - The 104 individual Apartments hereby established and which shall be individually conveyed and owned, each have a direct exit to a thoroughfare or to a given common space leading to a thoroughfare, and they are identified and described as follows:

(a) Apartments on Second Floor. - This floor contains ten (10) Apartments and they are numbered for identification as Apartments 201, 202, 203, 204, 205, 206, 207, 208, 209, and 210. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "D", and all such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(b) Apartments on Third Floor. - There are ten (10) Apartments on this floor and they are numbered for identification as Apartments 301, 302, 303, 304, 305, 306, 307, 308, 309 and 310. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "E", and all such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(c) Apartments on Fourth Floor. - There are ten (10) Apartments on this floor and they are numbered for identification as Apartments 401, 402, 403, 404, 405, 406, 407, 408, 409 and 410. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "F", and all such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(d) Apartments on Fifth Floor. - There are ten (10) Apartments on this floor and they are numbered for identification as Apartments 501, 502, 503, 504, 505, 506, 507, 508, 509 and 510. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "G", and all such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(e) Apartments on Sixth Floor. - There are ten (10) Apartments on this floor and they are numbered for identification as Apartments 601, 602, 603, 604, 605, 606, 607, 608, 609 and 610. The identifying

number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "H", and all of such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(f) Apartments on Seventh Floor. - There are ten (10) Apartments on this floor and they are numbered for identification as Apartments 701, 702, 703, 704, 705, 706, 707, 708, 709, and 710. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "I" and all of such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(g) Apartments on Eighth Floor. - There are ten (10) Apartments on this floor and they are numbered for identification as Apartments 801, 802, 803, 804, 805, 806, 807, 808, 809 and 810. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "J" and all of such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(h) Apartments on Ninth Floor. - There are ten (10) Apartments on this floor and they are numbered for identification as Apartments 901, 902, 903, 904, 905, 906, 907, 908, 909 and 910. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "K" and all of such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(i) Apartments on Tenth Floor. - There are eight (8) Apartments on this floor and they are numbered for identification as Apartments 1001, 1002, 1003, 1004, 1005, 1006, 1007 and 1008. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "L" and all of such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(j) Apartments on Eleventh Floor. - There are eight (8) Apartments on this floor and they are numbered for identification as Apartments 1101, 1102, 1103, 1104, 1105, 1106, 1107 and 1108. The identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "M" and all of such information and descriptive data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

(k) Apartments on Twelfth Floor. - There are eight (8) Apartments on this floor and they are numbered for identification as Apartments 1201, 1202, 1203, 1204, 1205, 1206, 1207, and 1208. The

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identifying number, location, size, square footage, dimensions and other descriptive data of each Apartment on this floor are shown and depicted on the survey plat attached hereto as EXHIBIT "N" and all of such information and description data shown on such exhibit is incorporated herein and made part hereof for all purposes by reference thereto.

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~~7. COVERED PARKING SPACES. - There are one hundred four (104) numbered covered parking spaces on the project land which are part of the limited common elements of this condominium project as shown on the survey plat attached hereto as EXHIBIT "B", and each such numbered covered parking space bears the same number for identification as the identification number of the Apartment to which it is assigned for the exclusive use of the owner and/or occupants of each such Apartment. Accordingly, it is hereby covenanted and agreed that each numbered parking space shown on said EXHIBIT "B" is intended for and shall be used only by the owner and/or occupants of the Apartment which bears the same identification number. For example, parking space numbered 201 is assigned for the exclusive use of the owner and/or occupants of Apartment numbered 201, parking space 301 is assigned for the exclusive use of the owner and/or occupants of Apartment 301, and in like manner and sequence each numbered parking space is assigned to the Apartment bearing the same number.~~

8. STORAGE LOCKERS. - There are one hundred four (104) numbered storage lockers on the first floor of the Apartment Building which are part of the limited common elements of this Apartment Project as shown on EXHIBIT "C" attached hereto, and each such numbered storage locker bears the same number for identification as the identification number of the Apartment to which it is assigned for the exclusive use of the owner and/or occupants of each such Apartment. Accordingly it is hereby covenanted and agreed that each numbered storage locker shown on said EXHIBIT "C" is intended for and shall be used only by the owner and/or occupants of the Apartment which bears the same identification number. For example, storage locker numbered 201 is assigned for the exclusive use of the owner and/or occupant of Apartment 201, storage locker 301 is assigned for the exclusive use of the owner and/or occupants of Apartment 301, and in like manner and sequence each numbered storage locker is assigned to the Apartment bearing the same number.

9. DESCRIPTION OF COMMON ELEMENTS. - The common elements of this condominium project, including both general and limited common elements, shall consist of all of the project property as herein defined and described, except that the 104 individual Apartments and the interior construction, fixtures, appliances, elements, and private balcony appertaining to each Apartment which shall be individually owned as part of the Apartment as provided for in this Declaration, and all of such common elements, general and limited, include, but are not limited to, all of the project land as hereinabove described, the communication ways, the compartments for installation of central services, the corridors or hallways, the foundation, bearing walls and columns, the exterior walls, exterior glass and plate glass, the roof, all structural and supporting parts of the Apartment Building, the elevators and elevator shafts, the recreational facilities, including tennis courts, swimming pools and the like, and in general all of the project land and portions of the Apartment Building and other improvements, except the individual Apartments and the aforesaid appurtenances thereto which are to be

individually and privately owned as part of each Apartment. The common elements shall also include all movable or personal property at any time belonging to or acquired by the Council of Co-owners for the common use, benefit or enjoyment of all Unit Owners.

10. USE OF THE COMMON ELEMENTS.

(a) General Common Elements. - Each Unit Owner shall have the non-exclusive right and easement to use and enjoy the general common elements, in common with all other Unit Owners, for the purposes for which they are intended and as may be required for the purposes of access and ingress and egress to and the use, occupancy and enjoyment of the respective apartments owned by such Unit Owners, without hindering or encroaching upon the lawful rights of other Co-owners. Such right to use and enjoy the general common elements shall extend to each Unit Owner, the members of his family, the tenants or other lawful occupants of each Apartment, and their guests, visitors, invitees or permittees, and all such other persons as may be invited or permitted to use the same by the Council of Co-Owners or its duly authorized representative. Such right to the use of the general common elements shall be subject to and governed by the provisions of the Act, this Declaration, the By-laws attached hereto, and all amendments to the same, and the Rules and Regulations hereafter lawfully made or adopted by the Council of Co-Owners. Each Unit Owner shall be deemed to have a non-exclusive easement in the interest of all other Unit Owners in the general common elements for the installation, operation, maintenance, repair or replacement of all individually owned fixtures, equipment and appliances, serving or appertaining to his Apartment and which are in any way affixed to, supported by or located in any space or structure constituting part of the general common elements.

(b) Limited Common Elements. - The limited common elements, consisting of the 104 numbered covered parking spaces and the 104 numbered storage lockers, respectively shown on Exhibits "B" and "C" attached hereto, shall be used exclusively by the Owners and/or occupants of the Apartments to which such parking spaces and storage lockers are assigned.

11. PROPORTIONATE OWNERSHIP OF COMMON ELEMENTS, SHARE OF COMMON EXPENSES AND VOTING RIGHTS. - The percentage interest which each Apartment bears to the entire condominium regime is set out in the following "SCHEDULE OF PERCENTAGES". The percentage of each Apartment is based on the ratio that the approximate gross square footage of each Apartment, including its balcony, bears to the approximate gross square footage of all Apartments and their balconies in the aggregate. A slight adjustment has been made in respect to some particular apartments in order to make the percentages of all Apartments total 100%. For the purpose of computing these percentages, the approximate square footage of each Apartment has been calculated on dimensions extending to the center line of partition walls between Apartments and to the outside surface of exterior walls. (Note: The approximate square footage of each apartment within the interior surfaces of the perimeter walls, not including its balcony, is shown on the survey plats of the apartments which are attached as Exhibits to this Declaration). The percentage shown below for each Apartment fixes and represents the undivided percentage of ownership interest of the Owner of each such Apartment in the common elements, and also his proportionate share of and liability for the common expenses, and his proportionate representation for voting purposes in the meetings of the members of the Council of Co-Owners.

SCHEDULE OF PERCENTAGES

<u>APARTMENT NO.</u>	<u>APPROX. GROSS SQ. FT. WITH BALCONY</u>	<u>PERCENTAGE</u>
201	947	1.0307%
202	729	.7934%
203	500	.5442%

(SCHEDULE OF PERCENTAGES Continued)

APARTMENT NO.	APPROX. GROSS SQ. FT. WITH BALCONY	PERCENTAGE
204	1000	1.0884%
205	1000	1.0884%
206	1000	1.0884%
207	1000	1.0884%
208	500	.5442%
209	729	.7934%
210	947	1.0307%
301	947	1.0307%
302	729	.7934%
303	500	.5442%
304	1000	1.0884%
305	1000	1.0884%
306	1000	1.0884%
307	1000	1.0884%
308	500	.5442%
309	729	.7934%
310	947	1.0307%
401	947	1.0307%
402	729	.7934%
403	500	.5442%
404	1000	1.0884%
405	1000	1.0884%
406	1000	1.0884%
407	1000	1.0884%
408	500	.5442%
409	729	.7934%
410	947	1.0307%
501	947	1.0307%
502	729	.7934%
503	500	.5442%
504	1000	1.0884%
505	1000	1.0884%
506	1000	1.0884%
507	1000	1.0884%
508	500	.5442%
509	729	.7934%
510	947	1.0307%
601	947	1.0307%
602	729	.7934%
603	500	.5442%
604	1000	1.0884%
605	1000	1.0884%
606	1000	1.0884%
607	1000	1.0884%
608	500	.5442%
609	729	.7934%
610	947	1.0307%
701	947	1.0307%
702	729	.7934%
703	500	.5442%
704	1000	1.0884%
705	1000	1.0884%

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