

BY-LAWS

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OF

SHADOWBROOK HORIZONTAL PROPERTY REGIME

ARTICLE I

GENERAL INFORMATION

SECTION 1. DEFINITIONS: Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(a) "Apartment" means a part of the property intended for independent use, consisting of one or more rooms occupying all or part of a floor in a building of one or more floors designated as an apartment in the master deed and delineated on the plans filed herewith.

(b) "Co-owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the Regime.

(c) "Council of co-owners" means all the co-owners as defined in subsection b, above; but a majority, as defined in subsection e, below, shall constitute a quorum for the adoption of decisions, except where a larger percentage of co-owners is specifically required by statute or elsewhere herein.

(d) "General common elements" means and includes:

- (1) The land and all portions of the property not located within the area of any apartment;
- (2) The foundations, main walls, roofs, halls, lobbies, stairways, and entrance and exit or communication ways;
- (3) The yards, gardens, roads, streets, parking areas, swimming pool, putting green, tennis and shuffleboard courts, and community building;
- (4) The compartments or installations for central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps and the like;
- (5) The garbage disposal facilities and, in general, all devices or installations existing for common use; and

(6) All other elements of the Regime rationally of common use or necessary to its existence, upkeep and safety.

(e) "Majority of co-owners" means Fifty-one per cent (51%) or more of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of Paragraph 4 of the Master Deed.

(f) "Master Deed" means the deed establishing the Regime.

(g) "Person" means an individual, firm, corporation, partnership, association trust or other legal entity, or any combination thereof.

(h) "Developers" means the owners of the original property who filed the Master Deed and are responsible for establishment and development of the Regime.

(i) "Property" means and includes the land, the buildings, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto; and

(j) All pronouns used herein include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

SECTION 2. STATUS OF APARTMENTS WITHIN REGIME: An apartment in the Regime may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts, inter vivos or mortis causa, as if it were sole and entirely independent of the other apartments in the Regime of which it forms a part, and the corresponding individual titles and interests shall be recordable.

SECTION 3. JOINT TENANCIES - TENANCIES IN COMMON - TENANCIES BY THE ENTIRETY:

(a) An apartment owner shall have the exclusive ownership of his apartment and shall have a common right to a share, with the other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property. This percentage has been computed and is set forth

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in Paragraph 4 of the Master Deed.

(b) Said percentage shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the Regime, except the owners of the entire property who established this Regime have reserved the right to add Phase II to the Regime at which time said percentage shall be recomputed to include both Phases.

(c) The said basic value shall not prevent each co-owner from fixing a different circumstantial value to his apartment in all types of acts and contracts.

SECTION 5. INDIVISIBILITY OF THE COMMON ELEMENTS: The common elements shall remain undivided and shall not be the object of an action for partition or division of the ownership.

SECTION 6: USE OF THE ELEMENTS HELD IN COMMON: Each co-owner may use the elements held in common in accordance with the purpose for which they were intended, without hindering or encroaching upon the lawful rights of the other co-owners. The Developers however, reserve the right to use one room on the ground floor of the Community building for an office for construction and sales purposes until all apartments have been sold, including those in Phase II if added.

SECTION 7: WAIVER OF THE REGIME: By unanimous consent, all of the co-owners of the apartments in the regime, or the sole owner, owning all of the apartments in the regime, may waive this regime and regroup or merge the records of the individual apartments or anticipated apartments with the principal property, provided, that the individual apartments are unencumbered or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

ARTICLE II

COUNCIL OF CO-OWNERS

SECTION 1: PLACE OF HOLDING MEETINGS: All meetings of the

who shall be present in person or represented by proxy at any meeting duly called, shall constitute a quorum for the transaction of business.

SECTION 5. ADJOURNMENT OF MEETINGS: If less than a quorum shall be in attendance at any time for which the meeting shall have been called, the meeting may, after the lapse of at least half an hour, be adjourned from time to time by a majority of the Co-Owners present or represented and entitled to vote thereat, and no further notice thereof need be given other than by announcement at said meeting which shall be so adjourned.

SECTION 6. SPECIAL MEETINGS. HOW CALLED: Special meetings of the Council of Co-Owners for any purpose or purposes may be called by the President or Secretary, and shall be called upon a request in writing therefor, stating the purpose or purposes thereof, delivered to the President or Secretary, signed by a majority of the Members of the Board of Administration or by fifty-one percent, in interest of the Co-Owners entitled to vote, or by resolution of the Board of Administration.

SECTION 7. NOTICE OF CO-OWNERS SPECIAL MEETING: Written or printed notice, stating the place and time of the meeting, and the general nature of the business to be considered, shall be given by the Secretary in the same manner as for the annual meeting.

SECTION 8. FIRST MEETING OF COUNCIL OF CO-OWNERS: Until the Developers of the Regime have completed and sold all of the apartments of Phase I of the Regime, or until August 8, 1978, or until Developers elect to terminate their control of the Regime, whichever shall first occur, there shall be no meeting of the Council of Co-Owners unless called by the Developers.

SECTION 9. REPORT: At the annual meeting, the Board of Administration shall present an audit of the common expenses, itemizing receipts and disbursements for the preceding calendar

and until their successors are elected and qualify. A person may be elected to hold one or more of the above mentioned offices simultaneously, except the office of President and Secretary may not be held by the same person.

SECTION 4. REGULAR MEETINGS: Regular meetings of the Members may be held with or without notice at such places and times as shall be determined from time to time by resolution of the Members.

SECTION 5. SPECIAL MEETINGS. HOW CALLED. NOTICE: Special meetings of the Board may be called by the President or by the Secretary or upon call of any two Members on at least one day's notice to each Member.

SECTION 6. PLACE OF MEETINGS: The Members may hold their meetings and have one or more office and keep the books of the Regime, at any office or offices of the Regime, or at any other place as they may from time to time by resolution determine.

SECTION 7. GENERAL POWERS OF ADMINISTRATION: The Board of Administration shall have exclusive control and management of all of the affairs of the Regime, and, subject to the restrictions imposed by law, or by these By-Laws, may exercise all the powers of the Regime. The Developers shall be responsible for and shall exercise this control and management until the first Board of Administration has been elected and qualified.

SECTION 8. SPECIFIC POWERS OF ADMINISTRATION: Without prejudice to such general powers it is hereby expressly declared that the Board of Administration shall have the following powers to-wit:

- (1) To make and change regulations, not inconsistent with these By-Laws, for the management of the Regime's affairs.
- (2) To purchase or otherwise acquire for the Regime any property, rights or privileges which the Regime is authorized to acquire.
- (3) To make and change internal rules having to do with use of property and operation of the Regime.

Internal Rules promulgated by the Board shall be binding on all Co-Owners and may be enforced through any appropriate legal remedy. Such rules shall be reduced to writing and each Co-Owner shall be furnished a copy thereof and of all changes, but failure to receive a copy shall not excuse a violation.

- (4) To remove any officer and any employee for cause, or any officer and any employee other than the President summarily with or without cause, and in their discretion, from time to time, to devolve the powers and duties of any officers upon any other persons for the time being.
- (5) To appoint and remove or suspend such subordinate officers, agents or employees as they may deem necessary for the care, upkeep and surveillance of the general common elements and services, and to determine their duties, and fix, and from time to time change their salaries or remuneration, and to require security as and when they think fit.
- (6) To designate and dismiss the personnel necessary for the works and the general common services of the Regime.
- (7) To confer upon any officer of the Regime the power to appoint, remove and suspend subordinate officers, agents and employees.
- (8) To determine who shall be authorized on the Regime's behalf to make and sign acceptances, endorsements, checks, releases, receipts, contracts and other instruments.
- (9) To enforce directly or through its officers or employees the Regulations hereinafter set forth, for the operation of the Regime.
- (10) To call special meetings of the Council of Co-Owners for any purpose or purposes.

SECTION 9. COMPENSATION OF ADMINISTRATION: Members of the Board shall not receive any stated salary for their services as Members. Nothing herein contained shall be construed to preclude any Member from serving the Regime in any other capacity as an officer, agent, employee or otherwise, and receiving compensation therefor.

ARTICLE IV

OFFICERS

SECTION 1. The officers of the Regime, shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as may from time to time be elected or appointed

by the Board of Administration. One person may hold one or more of the offices, except the offices of President and Secretary may not be held by the same person.

SECTION 2. PRESIDENT: The President shall, when present, preside at all meetings of the Board, and act as temporary chairman at, and to call to order, all meetings of the Council of Co-Owners, and he shall have power to call special meetings of the Co-Owners and of the Board for any purpose or purposes, appoint and discharge, subject to the approval or confirmation of the Board, employees and agents of the Regime and fix their compensation, make and sign contracts and agreements in the name and behalf of the Regime, and while the Board is not in session he shall have general management and control of the business and affairs of the Regime; he shall see that the books, reports, statements and certificates required by law are properly kept, made and filed according to law; and he shall generally do and perform all acts incident to the office of President, or which are authorized or required by law.

SECTION 3. VICE PRESIDENT: Each Vice President shall have such powers and shall perform such duties as shall be assigned to him by the Board.

SECTION 3. SECRETARY: The Secretary shall give, or cause to be given, notice of all meetings of Co-Owners and of the Board, and other notices required by law or by these By-Laws, and in case of his absence or refusal or neglect so to do, any such notice may be given by any person designated by the President, or by the Board, or Co-Owners, upon whose requisition the meeting is called as provided in there By-Laws. He shall record all the proceedings of the meetings of the Council of Co-Owners and of the Board in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the Board or the President.

SECTION 5. TREASURER: The Treasurer shall have the custody of all funds, securities, evidences of indebtedness and other valuable documents of the Regime, he shall receive and give or cause to be given receipts and acquittances for moneys paid in on account of the Regime and shall pay out of the funds on hand all just debts of the Regime of whatever nature upon maturity of the same; he shall enter or cause to be entered in books of the Regime to be kept for that purpose full and accurate accounts of all moneys received and paid out on account of the Regime, and whenever required by the President or the Board, he shall render a statement of his cash accounts; he shall keep or cause to be kept such other books as will show a true record of the expenses, losses, gains, assets and liabilities of the Regime; and shall perform all of the other duties incident to the office of Treasurer. He shall, if required by the Board, give the Regime a bond for the faithful discharge of his duties in such amount and with such surety as the Board may prescribe.

ARTICLE V.

RESIGNATIONS. FILLING OF VACANCIES

INCREASE OF NUMBER OF MEMBERS OF THE BOARD

SECTION 1. RESIGNATIONS: Any Board Member or other officer may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 2. FILLING OF VACANCIES: If the office of any Board Member or other officer becomes vacant, the remaining Members of the Board in office, though less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his successors shall be duly chosen.

REGULATIONS FOR OPERATION OF THE REGIMESECTION 1. DUTIES OF THE BOARD OF ADMINISTRATION: The

Board of Administration, acting directly or through its officers and employees, and for the benefit of the apartments and the Co-Owners, shall have the responsibility to provide and to pay therefor from the common expense fund the following:

(a) Water, sewer, garbage collection, electrical, telephone and gas and other necessary utility service for the common elements (and to the extent not separately metered or charged, for the apartments);

(b) A policy or policies of fire insurance as the same are more fully set forth hereinafter, with extended coverage endorsement, for the full insurable replacement value of the apartments and common elements, payable as provided hereinafter, or such other fire and casualty insurance as the Board of Administration shall determine gives substantially equal or greater protection to the owners, and their mortgagees as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each apartment, if any;

(c) A policy or policies as the same are more fully set forth hereinafter insuring the Board of Administration and the Co-Owners against any liability to the public or to the Co-Owners and their invitees, or tenants, incident to the ownership and/or use of the Regime, and including the personal liability exposure of the Co-Owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars for any one person injured, for any one accident, and shall not be less than One Hundred Thousand and No/100 (\$100,000.00) Dollars for property damage each occurrence (such limits and coverage to be reviewed at least annually by the Board of Administration and increased in its discretion). Said policy or policies shall

issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured;

(d) Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(e) The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Board of Administration as well as such other personnel as the Board of Administration shall determine shall be necessary or proper for the operation of the common elements, whether such personnel are employed directly by the Board of Administration or are furnished by the Manager;

(f) Legal and accounting services necessary or proper in the operation of the common elements or the enforcement of these By-Laws;

(g) A fidelity bond naming the Manager, and such other persons as may be designated by the Board of Administration as principals and the owners as obligees, for the first year in an amount at least equal to Twenty-five percent (25%) of the estimated cash requirement for that year determined as set forth hereinafter, and for each year thereafter in an amount at least equal to Twenty-five percent (25%) of the total sum collected through the common expense fund during the preceding year;

(h) Painting, maintenance, repair and all landscaping of the common elements, and such furnishings and equipment for the common elements as the Board of Administration shall determine are necessary and proper, and the Board of Administration shall have the exclusive right and duty to acquire the same for the common elements; provided, however, that the interior surfaces of each apartment shall be painted, maintained and repaired by the Co-Owner there, at his expense;

(i) Any other materials, supplies, labor, ^{VOL. 833, PAGE 515} services, maintenance, repairs, structural alternations, insurance, taxes or assessments which the Board of Administration is required to secure or pay for pursuant to the terms of these By-Laws, the Master Deed or by law or which in its discretion shall be necessary or proper, for the operation of the common elements or for the enforcement of these By-Laws, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alternations, insurance, taxes or assessments are provided for particular apartments, the cost thereof shall be specifically assessed to the owners of such apartments;

(j) Maintenance and repair of any apartment, if such maintenance or repair is reasonably necessary in the discretion of the Board of Administration to protect the common elements or preserve the appearance and value of the project, and the owners of said apartment have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board of Administration to said Co-Owner, provided that the Board of Administration shall levy a special assessment against the apartment of such Co-Owner for the cost of said maintenance or repair; and

(k) The Board of Administration's authority hereinabove enumerated shall be limited in that the Board of Administration shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of replacing portions of the common elements, subject to all the provisions of these By-Laws having a cost in excess of Five Thousand and No/100 (\$5,000.00) Dollars except as expressly provided herein, without the prior approval of the Council of Co-Owners;

(l) The Powers, rights and authorities of the Board of Administration to fix and make assessments to hire a manager and

other personnel and in general to arrange and provide for the care, upkeep, maintenance and operation of the common elements, shall be exercised by the Developers until the first Board of Administration has been elected and qualified.

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SECTION 2. COMMON EXPENSES-ASSESSMENTS:

(a) Within thirty (30) days, prior to the beginning of each calendar year, the Board of Administration shall estimate the net charges to be paid during such year, including a reasonable provision for future capital improvements, contingencies and replacements, and less any expected income and any surplus from the prior years fund. Said estimated charges shall be assessed to the owners pursuant to the percentages appertaining in Paragraph 4 of the Master Deed. The assessment shall be kept under continual review and shall be amended during the year as required in the discretion of the Board of Administration. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board of Administration in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board of Administration shall designate;

(b) All funds collected hereunder shall be expended for the purpose designated herein, except a fund for future capital improvements may be established and accumulated and designated for that particular purpose;

(c) The omission by the Board of Administration, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of these By-Laws, or a release of any Co-Owner from the obligations to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the proceeding year shall continue until a new assessment is fixed. No owner may exempt himself from liability for his contribution toward the common

expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his apartment; and VOL 833 PAGE 517

(d) The Board of Administration shall keep detailed, accurate records of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the owners at convenient hours on week days.

SECTION 3. DEFAULT IN PAYMENT OF ASSESSMENTS:

(a) Each monthly assessment and each special assessment shall be a separate, distinct and personal debt and obligation of the Co-Owner against whom assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to any Co-Owner, plus interest at the rate of seven percent (7%) per annum, costs and a reasonable attorney's fee shall become a lien upon such apartment upon recordation of a notice of assessment. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

- (1) Assessments, liens and charges for taxes past due and unpaid on the apartment, and
- (2) Payments due under mortgage instruments of encumbrance duly recorded prior to the date such notice is recorded.

(b) A certificate executed and acknowledged by a majority of the Board of Administration stating the indebtedness secured by the lien upon any apartment created hereunder, shall be conclusive upon the Board of Administration and the owners as to the amount of such indebtedness on the date of the certificate, in

favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of an apartment upon request at a reasonable fee, not to exceed Ten and No/100 (\$10.00) Dollars. Unless the request for a certificate of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrances holding a lien on an apartment may pay any unpaid common expenses payable with respect to such apartment and upon such payment such encumbrancer shall have a lien on such apartment for the amounts paid of the same rank as the lien of his encumbrance.

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(c) Upon payment of a delinquent assessment concerning which such a certificate has been so recorded, or other satisfaction thereof, the Board of Administration shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate, stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale by the Board of Administration, such sale to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the owner shall be required to pay the costs and expenses of such proceedings and a reasonable attorney's fee.

(d) The Board of Administration shall have the power to bid in the apartment at foreclosure or other sale and to hold, lease, mortgage and convey the apartment.

SECTION 4. MORTGAGE PROTECTION: Notwithstanding other provisions hereof:

(a) The liens created hereunder upon any apartment shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded prior mortgage

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upon such interest made in good faith and ^{VOL 833} ^{PAGE 519} provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 3 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as Co-Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof; and

(c) By subordination agreement executed by a majority of the Board of Administration, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

SECTION 5. DELEGATION OF AUTHORITY: The Board of Administration may delegate any of its duties, powers or functions, including but not limited to, the authority to give the certificates provided for in Section 3 hereof, and the authority to give the subordination agreements provided for in Section 4 hereof, to its officers or any person or firm, to act as Manager of the project, provided that any such delegation shall be revocable upon notice by the Board of Administration. The members of the Board of Administration shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function delegated by written instrument executed by a majority of the Board of Administration. In the absence of the employment of a Manager, the President of the Board of Administration shall act as Manager. The employment agreement between the Developers and any Manager employed by them is not binding on the Board of Administration when it assumes the management responsibility.

SECTION 6. CO-OWNER'S OBLIGATION TO REPAIR: Except for those portions which the Board of Administration is required to maintain

and repair hereunder (if any), each Co-Owner shall at his expense keep the interior of his apartment and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecoration, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his apartment. In addition to decorating and keeping the interior of the apartment in good repair, the owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposals or ranges that may be in, or connected with the apartment, subject to rules and regulations adopted by the

SECTION 7. PROHIBITION AGAINST STRUCTURAL CHANGES BY CO-OWNER:

The Co-Owner shall not, without first obtaining written consent of the Board of Administration, make or permit to be made any structural alteration, improvement or addition in or to his apartment or in or to the exterior of the buildings or other common elements. No Co-Owner shall paint or decorate any portion of the exterior of any buildings or other common elements without first obtaining written consent of the Board of Administration.

SECTION 8. LIMITATION ON USE OF APARTMENTS AND COMMON ELEMENTS:

(a) No owner shall occupy or use his apartment or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Co-Owner and his family, or his lessees or guests;

(b) There shall be no obstruction of the common elements. Nothing shall be stored in the common elements without the prior consent of the Board of Administration;

(c) Nothing shall be done or kept in any apartment or in the common elements which will increase the rate of insurance on the common elements, without the prior written consent of the Board of Administration. No Co-Owner shall permit anything to be done

or kept in his apartment or in the common elements which will result in the cancellation or increase the cost, of insurance on any apartment or any part of the common elements or which would be in violation of any law. No waste will be committed in the common elements;

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(d) No sign of kind shall be displayed to the public view on or from any apartment or the common elements, without the prior consent of the Board of Administration;

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any apartment or in the common elements, except that dogs, cats or other household pets may be kept in apartments, subject to rules and regulations adopted by the Board of Administration;

(f) No noxious or offensive activity shall be carried on in any apartment or in the common elements, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners;

(g) Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Board of Administration;

(h) There shall be no violation of the internal rules adopted and promulgated by the Board of Administration.

(i) No clothes or similar items shall be hung or placed outside exposed to public view on or from any apartment or the common elements.

SECTION 9. ENTRY FOR REPAIRS: The Board of Administration or its agents may enter any apartment when necessary in connection with any maintenance, landscaping or construction for which the Board of Administration is responsible. Such entry shall be made with as little inconvenience to the Co-Owners as practicable, and any damage caused thereby shall be repaired by the Board of Administration out of the common expense fund.

SECTION 10. FAILURE OF BOARD OF ADMINISTRATION TO INSIST ON STRICT PERFORMANCE NO WAIVER:

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The failure of the Board of Administration to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of these By-Laws, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, conditions or restrictions, shall remain in full force and effect. The receipt by the Board of Administration of any assessment from a Co-Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of Administration of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Administration.

SECTION 11. LIMITATION OF BOARD OF ADMINISTRATION: The Board of Administration shall not be liable for any failure of water supply or other service to be obtained and paid for by the Board of Administration hereunder or for injury or damage to person or property caused by the elements or by another owner or person in the project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Board of Administration. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the common elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

SECTION 12. INDEMNIFICATION OF BOARD OF ADMINISTRATION: Each member of the Board of Administration shall be indemnified by the

Co-Owners against all expenses and liabilities, including attorneys fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board of Administration, or any settlement thereof, whether or not he is a member of the Board of Administration at the time such expenses are incurred, except in such cases wherein the member of the Board of Administration is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that, in the event of a settlement, the indemnification shall apply only when the Board of Administration approves such settlement and reimbursement as being for the best interest of the Board of Administration.

SECTION 13. INSURANCE: The Board of Administration shall obtain and maintain at all times insurance of the type and kind and in at least the amount provided hereinabove, and including insurance for such other risks as the Board of Administration shall reasonably determine, which insurance shall be governed by the following provisions:

- (a) All policies shall be written with a company licensed to do business in the State of Arkansas, and holding a rating of "AAA" or better by Best's Insurance Reports;
- (b) Exclusive authority to adjust losses under policies hereafter in force in the Regime, except policies of the individual co-owners, shall be vested in the Board of Administration or its authorized representative;
- (c) In no event shall the insurance coverage obtained and maintained by the Board of Administration hereunder, be brought into contribution with insurance purchased by individual co-owners or their mortgagees;
- (d) Each owner may obtain additional insurance at his own expense; provided, however, that no co-owner shall be entitled to exercise his right to maintain insurance coverage in such a way

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as to decrease the amount which the Board of Administration, in behalf of all of the co-owners may realize under any insurance policy which the Board of Administration may have in force on the Regime at any particular time;

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(e) Each co-owner shall be required to notify the Board of Administration of all improvements made to his apartment, the value of which is in excess of One Thousand and No/100 (\$1,000.00) Dollars;

(f) Any co-owner who obtains individual insurance policies covering any portion of the Regime other than his individual personal property shall be required to file a copy of such individual policy or policies with the Board of Administration within thirty (30) days after purchase of such insurance;

(g) The Board of Administration shall make every effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Board of Administration, the owners and their respective servants, agents and guests;

(2) That any "no other insurance" clause in the master policy shall not apply to individual co-owner's policies.

(h) The annual insurance review which the Board of Administration is required to conduct, shall include an appraisal of the improvements in the project by a representative of the insurance carrier of the master policy.

SECTION 14. DAMAGE AND DESTRUCTION:(a) In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. Reconstruction of the buildings, as used in this paragraph, means restoring the buildings to substantially the same condition existing prior to the fire, casualty or other disaster, with each apartment and the common elements having essentially the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished by the Board of Administration.

(b) If the insurance proceeds are insufficient to reconstruct the buildings, damage to or destruction of the buildings shall be promptly repaired and restored by the Board of Administration, using proceeds of insurance, if any, on the buildings for that purpose, and the co-owners directly affected by the damage shall be liable for assessment for any deficiency, in proportion to the value of their respective apartments. However, if two-thirds or more of the buildings are destroyed or substantially damaged and if the owners, by a vote of at least three-fourths of the voting power, do not voluntarily, within One Hundred (100) days after such destruction or damage, make provision for reconstruction, the Board of Administration shall record, with the County Recorder, a notice setting forth such facts, and upon the recording of such notice:

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- (1) The property shall be deemed to be owned in common by the co-owners;
- (2) The undivided interest in the property owned in common which shall appertain to each co-owner shall be the percentage of undivided interest previously owned by such co-owner in the common elements;
- (3) Any lien affecting any of the apartments shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the co-owners in the property; and
- (4) The property shall be sold by subject to an action for partition at the suit of any co-owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the co-owners in a percentage equal to the percentage appertaining to each co-owner, after first adding to the fund the amount of all liens in favor of the Board of Administration against co-owners, and their deducting the amounts of said liens from the shares of such co-owners.

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SECTION 15. SALE OR LEASE RIGHT OF FIRST REFUSAL: In the event any co-owner of an apartment shall wish to resell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or Tenant, the Board of Administration and all co-owners shall be given written notice thereof together with a copy of such offer. The remaining co-owners through the Board of Administration or a person named by the Board of Administration, shall have the right to purchase or lease the subject apartment upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing co-owner, and a matching down payment or deposit is provided to the selling or leasing co-owner during the Twenty-one (21) day period immediately following the delivery of said notice.

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In the event any co-owner shall attempt to sell or lease his apartment without affording to the other co-owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the co-owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of a co-owner to subject his apartment to a deed of trust, mortgage or other security instrument.

The failure of or refusal to exercise the right to purchase or lease an apartment shall not constitute or be deemed to be a waiver of future rights to purchase or lease under this Section.

SECTION 16. MORTGAGES NOT AFFECTED BY RIGHT OF FIRST REFUSAL: In the event of any default on the part of any co-owner under any first mortgage made in good faith and for value, which entitled

the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Section 15, and the purchaser (or grantee under such deed in lieu of foreclosure) of such apartment shall thereupon and thereafter be subject to the provisions of these By-Laws. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the apartment free and clear of the provisions of Section 15, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof. VOL 833 PAGE 5

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws shall not be subject to the provisions of Section 15.

If a co-owner of an apartment can establish to the satisfaction of the Board of Administration that a proposed transfer is not a sale or lease, then such transfer shall not be subject to the provisions of Section 15.

SECTION 17. CERTIFICATE OF SATISFACTION OF RIGHT OF FIRST REFUSAL: Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any apartment, the Board of Administration shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(a) With respect to a proposed lease or sale under Section 15, that proper notice was given by the selling or leasing co-owner and that the remaining co-owner did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or its nominee, pursuant to Section 16, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Section 15; and

(c) With respect to any contemplated transfer which is not a sale or lease, that the transfer is not or will not be subject to the provisions of Section 15. Such a certificate shall be conclusive evidence of the facts contained therein.

SECTION 18. PERSONAL PROPERTY: The Board of Administration ^{VOL 833 PAGE 528} may acquire and hold, for the benefit of the co-owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the owners in the same proportion as their respective interest in the common elements, and shall not be transferable except with a transfer of an apartment. A transfer of an apartment shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property. The Developers shall execute and deliver bills of sale from time to time to the Board of Administration, for the benefit of all the co-owners, transferring all items of personal property located in the Regime, or procured or provided by the Developers and intended for the common use and enjoyment of the co-owners.

SECTION 19. AUDIT: Any co-owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the Board of Administration. The Board of Administration shall cause an audit of all books and records pertaining to the Regime to be made by a Certified Public Accountant at no greater than annual intervals and copies thereof shall be made available to the owners for inspection.

SECTION 20. AMENDMENTS: Except as otherwise provided herein, the provisions of these By-Laws may be amended by an instrument in writing signed and acknowledged by record co-owners holding two-thirds of the basic value of the property, which amendment shall be effective upon recordation in the office of the Recorder of Deeds and Mortgages of Garland County, Arkansas.

SECTION 21. SEVERABILITY: The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision thereof.

