

ARTICLE I

DEFINITIONS AND TERMS

1.1 DEFINITIONS OF TERMS. As used in this agreement, the following terms shall have the following meanings unless the context shall expressly provide otherwise:

a. "Board" or "Board of Directors" shall refer to the Board of Directors of BAY HILL POINT HOMEOWNERS ASSOCIATION.

b. "Common Assessment" means the charge against each Unit Owner and his Unit, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Property, which is to be paid uniformly and equally by each Unit Owner of the Association, as provided herein. This term shall also include charges assessed against each Unit Owner to maintain a reserve for the replacement fund.

c. "Common Elements" means and includes all of the Property and all of the improvements thereto and thereon located, excepting all Lots designated for the construction of a home thereon. Common Elements shall consist of the General Common Elements and the Limited Common Elements.

d. "Common Expenses" means and includes:

(1) All sums lawfully assessed against the Common Elements by the Managing Agent or Board;

(2) All expenses of administration and management, maintenance, operation, repair or replacement of and addition to the Common Elements (including unpaid special assessments);

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

(4) Expenses declared to be Common Expenses by this Declaration or by the By-Laws.

e. "Completed Unit" means a completely finished Unit, including but not limited to the installation of all appliances and utilities, rendering it ready for occupancy by an Owner other than the Declarant.

f. "Home Owners Association" or "Association" means BAY HILL POINT HOMEOWNERS ASSOCIATION, a Texas non-profit corporation, the By-Laws of which shall govern the administration of this Residential Property and the membership of which shall be composed of all the Owners of the Residential Units according to such By-Laws.

time as the Declarant transfers title to all of the Residential Units.

i. "Declarant" shall mean BAY HILL POINT DEVELOPMENT, INC., a Texas Corporation, its successors or assigns, which is developing the property.

j. "Declaration" shall mean this Residential Declaration instrument.

k. "General Common Elements" means a part of the Common Elements and includes:

(1) All of the property except all Lots as shown on the present Plat and all future revisions or modifications.

(2) All compartments or installations of central services, such as power, light, gas, cold and hot water, refrigeration, central air conditioning and central heating reservoirs, streets, walkways and the like;

l. "Lienholder" and "First Mortgagee" shall mean the holder of a first mortgage lien on any Unit in the Project.

m. "Limited Common Elements" means and includes those Common Elements which are reserved for the exclusive use of an individual Owner of a Unit for the exclusive use of those Owners, which may include:

(1) Pipes, electrical wiring and conduits located entirely within a Unit or serving only such Unit and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows, entryways, and all associated fixtures and structures therein, as lie outside the Unit boundaries; and

(2) Driveways designated as an appurtenance to a Unit; and

(3) Porch or patio structures serving exclusively a Unit; and

(4) Boat houses, boat docks, walkways and separate storage areas designated as an appurtenance to a Unit.

n. "Majority of Unit Owners" means those Owners with fifty-one (51%) of the votes entitled to be cast.

o. "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

his heirs, executors, administrators, assigns and grantees hereby agree that the square footage, size and dimensions of each Unit as set out or shown in this Declaration or in the survey Plat are approximate and are shown for descriptive purposes only. The Developer does not warrant, guarantee or represent that any Unit actually contains the area, square footage or dimensions shown by the Plat thereof. Each Purchaser and Owner of a Unit or interest therein agrees that the Unit has been or will be purchased as actually and physically existing at the time such purchase is closed. Each Purchaser of a Unit expressly waives any claim or demand which he may have against the Developer and any person whomsoever on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown on the Plat. It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purposes whatsoever or in connection with any matter, the existing physical boundaries of the Unit shall be conclusively presumed to be the boundaries regardless of settling, rising or lateral movements of the Building, and regardless of variances between boundaries as shown on the Plat and those of the Buildings.

r. "Premises", "Project", or "Property" means and includes the land, the Buildings and all improvements and structures thereon and all rights, easements and appurtenances belonging thereto.

s. "Special Assessments". In addition to the common assessments described above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part:

(1) The Cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; or

(2) The expense of any other contingencies or unbudgeted costs; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to the interest in the Common Elements owned by each. The Association, after due notice and hearing, shall also have the authority to establish and fix a special assessment upon any Unit to secure the liability of the Owner of such Unit to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach shall require an expenditure by the Association for repair or remedy. Special assessments may be billed or collected on a monthly basis. The above provisions shall not apply to any Unit which is not a part of the Common Area.

or the exterior surfaces of any perimeter walls, window frames, doors, and door frames and trim if any extend beyond the boundaries of the lot; and the space includes both the portions of the Unit so described and the air space so encompassed, excepting the Common Elements. In interpreting deeds, mortgages, deeds of trust and other instruments, the existing physical boundaries of the Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries, regardless of settling, rising or lateral movement of the Building and regardless of variances between boundaries shown on the Plat and those of the Building.

ARTICLE II

RESIDENTIAL UNIT DESIGNATIONS AND DESCRIPTIONS

2.1 RECORDATION OF PLAT. The original Plat filed for record prior to the recording of this Declaration has been modified and amended by the Revised Replat recorded in Volume 33, Page 806, Real Property Records, San Jacinto County, Texas, and will be further revised and amended by future replats covering the additional Lots One (1), Two (2), Six (6), Seven (7), Eight (8), Nine (9) and Ten (10).

2.2 DESIGNATION OF UNITS. The property is ultimately to be divided into ten (10) separately designated Residential Units. Each Unit is identified by number on the Map. The remaining portion of the Premises, referred to as the Common Elements, shall be owned in common by the Owners. The Owners of each Unit shall own an undivided one-tenth (1/10) interest in said Common Elements.

2.3 LIMITED COMMON ELEMENTS. Portions of the Common Elements are set aside and reserved for the exclusive use of the individual Owners, such areas being Limited Common Elements. The Limited Common Elements reserved for the exclusive use of the individual Owners are the automobile driveways, patio and porch structures (including the land area covered thereby), ~~boat~~ docks and walkways. Such spaces and structures are allocated and assigned by the Declarant to the respective Units. Such Limited Common Elements shall be used in connection with the particular Unit, to the exclusion of the use thereof by the other Owners, except by invitation.

2.4 REGULATION OF COMMON AREAS. Portions of the Common Areas are improved with green areas, walkways, streets, parking areas, and other facilities. Reasonable regulations governing the use of such facilities by Owners and by their guests and invitees shall be promulgated by the Declarant, or by the Board of Directors of the Association after the same has been elected. All Owners shall be furnished a copy of such regulations. Each Owner shall be required to strictly comply with said Rules and Regulations, and shall be responsible to the Association for the compliance therewith by the members of their respective families, relatives, guests or invitees, both minor and adult.

followed by the words BAY HILL POINT, a subdivision in San Jacinto County, Texas, as shown by the Revised Plat of record in the office of the County Clerk of San Jacinto County, Texas. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the Common Elements.

2.7 ENCROACHMENTS. If any portion of the Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion or portions of a Unit or Units encroach upon the Common Elements, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. A valid easement also exists to that portion of the General Common Elements and of the Limited Common Elements occupied by any part of an Owner's Unit not contained within the physical boundaries of such Unit, including, but not limited to, space occupied by porches and patios, walkways, heating and air conditioning equipment, utility lines and similar equipment which serves only one (1) Unit. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or the individual Units.

2.8 USE AND OCCUPANCY RESTRICTIONS.

a. Subject to the provisions of this Declaration and By-Laws, no part of the Property may be used for purposes other than housing and the related common purposes for which the Property was designed. Each Unit shall be used for the residential purposes or such other uses permitted by this Declaration, and for no other purposes. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from:

(1) Maintaining his personal professional library;

(2) Keeping his personal business or professional records or accounts; or

(3) Handling his personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions.

b. The Common Elements shall be used only by the Unit Owners and their agents, servants, tenants, family members, customers, invitees and licensees for access, ingress to and egress from the respective Units and for other purposes incidental to use of the Units.

c. The use, maintenance and operations of the Common Elements shall not be obstructed, damaged or

Jacinto County, Texas, use of the Property by the Unit Owners shall be subject to the following restrictions:

(1) Nothing shall be stored in the Common Elements without prior consent of the Board, except in storage areas or as otherwise herein expressly provided;

(2) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or the Common Elements which will result in the cancellation of insurance on any Unit, or any part of the Common Elements, or which will be in violation of any law;

(3) No waste shall be committed in or on the Common Elements;

(4) Subject to Declarant's rights under Paragraph 2.8d(14)(d) of this Declaration, no sign of any kind shall be displayed to the public view on or from any Unit or Common Elements without the prior written consent of the Board or the written consent of the Managing Agent acting in accord with the Board's direction;

(5) No noxious or offensive activity shall be carried on, in or upon the Common Elements, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Unit Owner. No loud noises or noxious odors shall be permitted on the property, the Board shall have the right to determine in accordance with the By-Laws if any such noise, odor or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Unit Owner in the Property, shall be located, used or placed on any portion of the Property or exposed to the view of other Unit Owners without the prior written approval of the Board;

(6) Except as expressly provided hereinabove, nothing shall be done or kept in any

rebuilding of the Buildings or any portion thereof;

(8) No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Unit or the Common Elements, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its Occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed in such a manner that no fire hazard is created. No clothing or household fabrics shall be hung, dried or aired in such a way in the Property as to be visible to other Property and no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials, scrap refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property, except within an enclosed structure or if appropriately screened from view;

(9) No Unit Owner shall park, store or keep any vehicle, except wholly within the parking space designated therefor, and any inoperable vehicle shall not be stored in a parking space or within the Common Elements in general. No Unit Owner shall park, store or keep within or adjoining the Property any large commercial-type vehicle (dump truck, cement mixer truck, oil or gas truck, delivery truck and any other vehicle equipment, mobile or otherwise, deemed to be a nuisance by the Board), or any recreational vehicle (camper unit, motor home, truck trailer, boat, mobile home or other similar vehicle deemed to be a nuisance by the Board). No Unit Owner shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Common Elements. Parking spaces shall be used for parking purposes only;

(10) Except within individual Units, no planting, transplanting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board;

(11) Motorcycles, motorbikes, motor scooters or other similar vehicles shall not be operated within the Property except for the purpose of transportation directly from a parking space to a point outside the Property,

provided they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in the Declaration "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, the Association may determine a reasonable number in any instance to be more or less, and the Association may limit the size and weight of any household pets allowed. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Unit Owner. Animals belonging to Unit Owners, Occupants, or their licensees, tenants or invitees within the Property must be kept either within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Board. Should any animal belonging to a Unit Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it has control over the Association) or a person designated by Declarant to do so and subsequent thereto by the Association or its Managing Agent, to a point under the jurisdiction of the local municipality in which the Property is situated and subject to the laws and rules governing said point, or to a comparable animal shelter. Furthermore, any Unit Owner shall be absolutely liable to each and all remaining Unit Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by a Unit Owner or members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Unit Owner to clean up after such animals which have used any portion of the Common Elements;

(13) No Unit Owner shall be permitted to lease his unit for hotel or transient purposes, which, for purposes of this paragraph is defined as a period less than thirty (30) days. No Unit Owner shall be permitted to lease less than the entire Unit. Every such lease shall be in writing. Every such lease shall provide that the lessee shall be bound by and subject to all of the obligations under the Declaration and By-Laws of the Unit Owner making such lease and failure to do so shall be a default thereunder. The Unit Owner making such lease shall not be relieved thereby from any of said obligations;

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing in any Unit owned by them whatever they determine to be necessary or advisable in connection with the completion of any work thereon;

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on the Common Elements or any Unit owned or controlled by Declarant, its successors or assigns, or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing any work and establishing the Property as a Residential Unit and disposing of the same by sale, lease or otherwise;

(c) Prevent Declarant, its successors or assigns, or its or their representatives, from maintaining a Sales Office and maintaining and showing model Units to aid in the marketing of the Units during the Construction Period; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs for marketing of Units in the Property.

ARTICLE III

RIGHTS AND OBLIGATIONS OF OWNERSHIP

3.1 OWNERSHIP. A Residential Unit will be a fee simple estate and may be owned by any person, firm, corporation or other entity singularly, as joint tenants, as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas.

3.2 PARTITION. The Common Elements (both General and Limited) shall be owned in common by all of the Owners of the Residential Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements other than that as specifically provided for hereinafter in Paragraph 6.2, "Judicial Partition". Nothing contained herein shall be construed as limitation of the right of partition of a Residential Unit between the Owners thereof, but such partition shall not affect any other Residential Unit.

3.3 EXCLUSIVENESS OF OWNERSHIP. Each Owner shall be

3.5 MECHANIC'S AND MATERIALMAN'S LIENS. No labor performed or materials furnished and incorporated in a Unit, notwithstanding the consent or request of the Owner, his agent, contractor or subcontractor, shall be the basis for filing of a lien against the Common Elements owned by such other Owners. Each owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

3.6 RIGHT OF ENTRY. The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

3.7 OWNER MAINTENANCE. An Owner shall maintain and keep in repair the Residential Unit, carport, patio, porches, and storage space of his own Unit, including the fixtures thereof; provided, however, all painting or staining of the exterior surfaces must be accomplished only with the prior written approval of the Association in order to maintain a uniform and pleasing aesthetic exterior appearance.

3.8 ALTERATION. No Owner shall in any way alter, modify, add to or otherwise perform any work whatever upon any of the Common Elements, Limited or General, without the prior written consent and approval in writing by the Board of Directors. Any such alteration or modification, including the painting or staining of the exterior surfaces thereof, shall be in harmony with the external design and location of the surrounding structures and topography, and shall not be considered until submission to the Association of complete plans and specifications showing the nature, kind, shape, size, materials, color and location for all proposed work. The Board shall have the obligation to answer within thirty (30) days after receipt of notice of the proposed alterations. Failure to so answer within the stipulated time shall mean that there is no objection to the proposed alteration or modification. During the Construction Period, Declarant shall have the sole right to approve or reject any plans and specifications submitted for consideration by an Owner.

3.9 LIABILITY FOR NEGLIGENT ACTS. In the event the need for maintenance or repairs is caused through the willful or negligent act of an Owner, his family, guests or invitees, and is not covered or paid for by insurance either on such Unit or the Common Elements, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject, pursuant to Article IV hereof. Such liability is limited to the liability Owner has under Texas Law.

3.10 SUBJECT TO DECLARATION AND BY-LAWS. Each Owner and

ARTICLE IV

MANAGEMENT AND ADMINISTRATION

4.1 BY-LAWS. The administration of this Property shall be governed by the By-Laws of BAY HILL POINT HOMEOWNERS ASSOCIATION, a non-profit corporation, referred to herein as the "Association". An Owner of a Residential Unit, upon becoming an Owner, shall be a Member of the Association and shall remain a Member for the period of his ownership. The Association shall be managed by a Board of Directors, duly appointed or elected, pursuant to the terms and conditions of the By-Laws. In addition, the Association shall enter into a management agreement upon the terms and conditions established in the By-Laws, and said management agreement shall be consistent with this Declaration.

4.2 DECLARANT CONTROL. Paragraph 4.1 notwithstanding, and for the benefit and protection of the Unit Owners and any First Mortgagees of record for the sole purpose of insuring a complete and orderly buildout as well as a timely sellout of the Residential Project, the Declarant will retain control of and over the Association for a maximum period not to exceed three (3) years, or upon the sale of seventy percent (70%) of the Units, or when in the sole opinion of the Declarant, the Project becomes viable, self-supporting and operational, whichever occurs first (1st). It is expressly understood the Declarant will not use said control for any advantage over the Unit Owners by way of retention of any residual rights or interest in the Association or through the creation of any management agreement with a term longer than three (3) years without majority Association approval upon relinquishment of Declarant control. At the end of the Declarant Control Period, the Declarant, through the Board of Directors, shall call the first (1st) annual meeting of the Association.

4.3 TEMPORARY MANAGING AGENT. During the period of administration of this Project by Declarant, the Declarant may employ or designate a temporary manager or managing agent, who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by Declarant to him, except for the right to effect improvements or repairs. The Declarant may pay such temporary manager or managing agent such compensation as it may deem reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses of this Residential Regime and shall be paid out of the Association budget.

4.4 SPECIFIC POWER TO RESTRICT USE AND ENJOYMENT. Every Owner and the Declarant shall have a beneficial interest of use and enjoyment in the Common Elements subject to the following limitations, restrictions and provisions:

- a. The right of the Association to publish rules and regulations governing use of the Common Areas and the improvements and facilities located

mortgage the Common Area and improvements for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property; providing, however, that the rights of any such Mortgagee in such property shall be subordinate to the rights of the Owners hereunder, and in no event shall any such Mortgagee have the right to terminate the Residential Regime established by this Declaration;

d. The right and duty of the Association to suspend the voting rights and the rights to the use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Residential Unit remains unpaid;

e. The right of Declarant or the Association after the Declarant Control Period to dedicate or transfer all or any part of the Common Area for utility easements to any public agency, authority or utility for the purposes, and subject to the conditions, of such agency, authority or utility. No such dedication or transfer shall be effective unless approved by all First Mortgagees and two-thirds (2/3) vote of the quorum of Owners present at a meeting of the Association specifically called for the purpose of approving any such dedication or transfer, and unless an instrument signed by the Board of Directors reflecting such vote of the Owners agreeing to such dedication or transfer and First Mortgagee approval has been duly recorded in the Residential Records of San Jacinto County, Texas;

f. The right of the Association to adopt, implement and maintain a private security system for the Premises consistent with applicable laws;

g. The right of the Association to establish rules and regulations governing traffic within the Common Areas, and to establish sanctions for any violation or violations of such rules and regulations;

h. The right of the Association to regulate noise within the Premises, including, without limitation, the right of the Association to require mufflers on engines and to prohibit the use of devices producing excessive noise; and

i. The right of the Association to control the visual attractiveness of the property, including, without limitation, the right to require Owners to eliminate objects which are visible from the Common Area and which, in the Association's judgment, detract from the visual attractiveness of the Property.

4.5 MEMBERSHIP, VOTING, QUORUM, PROXIES.

ownership and membership of the Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Board of Directors may, if it so elects, issue one (1) membership card to the Owner(s) of a Residential Unit. Such membership card shall be surrendered to the Secretary whenever ownership of the Residential Unit designated thereon shall terminate.

b. Voting. Unit ownership shall entitle the Owner(s) to cast one (1) vote per Unit in the affairs of the Association.

c. Quorum. The majority of the Unit Owners as defined in Article I shall constitute a quorum.

d. Proxies. Votes may be cast in person or by proxy. Proxies may be filed with the Secretary before the appointed time of each meeting.

ARTICLE V

MAINTENANCE ASSESSMENTS

5.1 ASSESSMENTS FOR COMMON EXPENSES. All Owners shall be obligated to pay the estimated assessments imposed by the Association to meet the Common Expenses. Assessments for the estimated Common Expenses shall be due monthly in advance on or before the first (1st) day of each month. Failure to pay by the fifteenth (15) day of each month shall require the imposition and assessment of a late charge of Five Dollars (\$5.00). Contribution for monthly assessments shall be prorated if the ownership of a Residential Unit commences on a day other than the first (1st) day of a month.

5.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, welfare and recreation of the residents in the Property, and in particular for the improvement, maintenance and preservation of the Property, the services and the facilities devoted to said purposes that are related to the use and enjoyment of both the Common Elements and the Units situated upon the Property. Such uses may include, but are not limited to, the cost to the Association of the following: all insurance, repair, replacement and maintenance of the Common Elements; painting and staining the exterior of all homes, carports, patios and porches; management costs, taxes, legal and accounting fees as may from time to time be authorized by the Association; construction of other facilities; maintenance of easements upon, constituting a part of, appurtenant to or for the benefit of the Property; mowing grass, caring for the grounds and landscaping; garbage pickup; maintenance of outdoor lighting; security

establish a reserve for repair, maintenance and other charges as specified herein.

5.3 DETERMINATION OF ASSESSMENTS. The assessments shall be determined by the Board of Directors based upon the cash requirements necessary to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements. This determination may include, among other items, taxes, governmental assessments, landscaping and grounds care, Common Area lighting, repairs and renovation, garbage collections, wages, water charges, legal and accounting fees, management costs and fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, expenses incurred in the operation and maintenance of recreation and administrative facilities, payment of any deficit remaining from a previous period, and the creation of a reserve contingency fund. The omission or failure of the Board to fix the assessment for any month shall not be deemed a waiver, modification or a release of the Owners from the obligation to pay.

5.4 INITIAL ASSESSMENT AND MAXIMUM MONTHLY ASSESSMENT.

a. The monthly assessments shall be made according to each Owner's undivided ten (10%) percent interest in and to the Common Elements.

b. As of January 1st of the year immediately following the conveyance of the first (1st) Residential Unit to an Owner other than the Declarant, the Association may set the monthly assessment for the next succeeding twelve (12) month period at an amount which shall not exceed one hundred ten percent (110%) of the monthly assessment allowed for January of the preceding year. If the Board determines at any time during the calendar year that a greater increase of the monthly assessment is required to adequately perform the duties and responsibilities of the Association and pay all expenses thereof, then the Board may call a special meeting of the Owners. By the assent of a two-thirds (2/3) vote of the quorum of Owners, present at such meeting, the monthly assessment may be set at whatever level such Owners approve. The new assessment shall become the basis for future annual increases, using the one hundred ten percent (110%) formula, as above outlined.

c. The Board of Directors shall have authority to lower the monthly assessment, if it deems feasible.

5.5 SPECIAL ASSESSMENTS FOR IMPROVEMENTS. Subsequent to the Declarant Control Period and in addition to the annual assessments authorized above, at any time the Association may levy in any calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in

5.6 COMMENCEMENT OF ASSESSMENTS. The monthly assessments provided for herein shall be due on the first (1st) day of the month. The assessments shall be prorated if the ownership of a Unit commences on a day other than the first (1st) day of the month. The Board shall fix the amount of the monthly assessments against such Unit at least thirty (30) days prior to January 1st of each year; provided, however, that the Board shall have a right to adjust the monthly assessments, as long as any such adjustment does not exceed the maximum permitted hereunder, with thirty (30) days' written notice given to each Owner. Written notice of the monthly assessment adjustment shall be sent to every Owner subject thereto. The due date shall be established by the Board, and unless otherwise provided or unless otherwise agreed by the Association, the Board shall collect the assessments monthly in accordance with Paragraph 5.1 hereof.

5.7 NO EXEMPTION. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the General or Limited Common Elements or by abandonment of his Unit.

5.8 LIEN FOR ASSESSMENTS.

a. All sums assessed but unpaid by a Unit Owner for its share of Common Expenses chargeable to its respective Residential Unit, including interest thereon at twelve percent (12%) per annum, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances, except only for:

(1) All taxes and special assessments levied by governmental and taxing authorities; and

(2) All liens securing sums due or to become due under any duly recorded mortgage vendor's lien or deed of trust.

b. To evidence such lien the Association may, but ~~shall~~ not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Residential Unit and a description of the Residential Unit. Such notice shall be signed by one (1) member of the Board of Directors and may be recorded in the Office of the Clerk and Recorder of San Jacinto County, Texas. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Residential Unit by the Association. Any such foreclosure sale is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002, Texas Property Code, successor to Article 3810 of the Revised Civil Statutes of the State of Texas, or in any manner permitted by law. Each Owner, by accept-

Association a reasonable rental for the Residential Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect same. The Association shall have the power to bid on the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

c. The amount of the Common Expenses assessed against each Residential Unit shall also be a debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

d. In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without recourse, a vendor's lien against each Unit to secure payment of a common assessment or special assessment which is levied pursuant to the terms hereof. Said liens may be enforced by appropriate judicial proceedings and the expenses incurred in connection therewith, including, but not limited to, interest, costs and reasonable attorney's fees, shall be chargeable to the Owner in default. Such lien shall be subordinate and inferior to those liens listed in Subparagraphs 5.8a(1) and (2).

e. Any encumbrancer holding a lien on a Residential Unit may pay any unpaid Common Expense payable with respect to such Unit, and upon such payment, such encumbrancer shall have a lien on such Unit for the amount paid of the same rank as the lien of his encumbrance.

5.9 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded mortgage or mortgages granted or created by the Owner of any Residential Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Unit. Sale or transfer of any Unit shall not affect the assessment lien; provided, however, that the sale or transfer of any Residential Unit pursuant to a foreclosure, a deed in lieu of foreclosure, assignment in lieu of foreclosure under such purchase money or improvement mortgages or deeds of trust shall extinguish the lien of such assessments as to payments thereof coming due prior to such sale or transfer, except for claims for its pro-rata share of such assessments resulting from a reallocation among all Units, which reallocation, if necessary, will require a readjustment of the common assessment as provided in Paragraph 5.4b. No sale or transfer shall relieve such Residential Unit, or the Owners thereof, from liability for any assessments thereafter becoming due or from the lien thereof.

5.10 STATEMENT OF ASSESSMENTS. Upon the written request of any Owner or any encumbrancer or prospective encumbrancer of a Residential Unit, the Association, by its Board of Directors,

prior to the date of making of such request shall be subordinate to the lien of the person requesting such statement.

The Purchaser, Donee or other transferee of a Unit, by deed or other writing (herein called "Grantee"), shall be jointly and severally liable with the transferor of such unit (herein called "Grantor") for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from Grantor the amounts paid by the Grantee, but such transferee shall be personally liable only if he expressly assumes such liability. The Grantee shall be entitled to a statement from the Board of Directors, setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current monthly assessment and the date such assessment becomes due, as well as any credit for advanced payments or for prepaid items, including, but not limited to, insurance premiums. This statement shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten (10) days of such request, such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the subject Residential Unit accruing prior to such ten (10) day period.

ARTICLE VI

DESTRUCTION OR OBSOLESCENCE OF IMPROVEMENTS

6.1 DESTRUCTION OR OBSOLESCENCE OF COMMON ELEMENTS.

a. This Declaration hereby makes mandatory the irrevocable appointment of an Attorney In Fact to deal with the Property upon its destruction or obsolescence. Title to any Residential Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any Grantee of a deed from the Declarant or from any Owner shall constitute appointment of the Attorney In Fact herein provided. All of the Owners irrevocably constitute and appoint BAY HILL POINT HOMEOWNERS ASSOCIATION as their Attorney in fact for these purposes. Repair or replacement, as used in the succeeding subparagraphs, means restoring the common improvement(s) to substantially the same condition in existence prior to the damage, with each Unit and Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be made available to the Association for the purpose of repair, restoration or replacements, unless all of the Owners and all of the First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter:

(1) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be

reconstructed by the Association, as Attorney In Fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Residential Units. Such deficiency assessment shall be a special assessment made pro rata according to each Owner's proportionate interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Residential Unit and may be enforced and collected as is provided in Article V hereof. The lien provided for herein shall be subordinate to any recorded first mortgage lien, as provided in Paragraph 5.9 of this Declaration. Should the Association choose to foreclose said lien, as provided in Article V, the proceeds derived from the sale of such Residential Unit shall be used and disbursed by the Association, as Attorney In Fact, in the following order:

- (a) For payment of taxes and special assessment liens in favor of any governmental assessing entity;
- (b) For payment of the balance of the lien of any first mortgage;
- (c) For payment of unpaid Common Expenses;
- (d) For payment of junior liens and encumbrances in the order and extent of their priority;
- (e) The balance remaining, if any, shall be paid to the Residential Unit Owner.

6.2 JUDICIAL PARTITION. There shall be no judicial partition of the Common Elements, nor shall Declarant or any person acquiring any interest in the Project or any part thereof seek any such judicial partition, provided, however, that if any Residential Unit shall be owned by two (2) or more co-tenants, as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition between such co-tenants, but such partition shall not affect any other Residential Unit.

maintain such information in a book entitled "Mortgagees of Residential Units".

7.2 NOTICE OF DEFAULT; LAPSE IN INSURANCE. The Association shall notify a First Mortgagee in writing, upon written request of such Mortgagee identifying the name and address of the Mortgagee and the Unit number, of any default by the Mortgagor in the performance of such Mortgagor's obligations, as set forth in this Declaration, which is not cured within sixty (60) days. The Association, upon written request, shall notify a First Mortgagee of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

7.3 EXAMINATION OF BOOKS. The Association shall permit First Mortgagees and the Veterans Administration to examine the books and records of the Association upon request.

7.4 RESERVE FUND. The Association shall establish adequate reserve funds for replacement of Common Element components and fund the same by regular monthly payments rather than by extraordinary special assessments. In addition, there shall be established a working capital fund for the initial operation of the Residential Project equal to at least three (3) months' estimated Common Assessments charge for each Unit, said deposit to be collected at closing of Unit sale.

7.5 ANNUAL AUDITS. Upon written request the Association shall furnish each First Mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.

7.6 NOTICE OF MEETINGS. The Association shall furnish each First Mortgagee upon request of such Mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such Mortgagee to attend such meetings, one (1) such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

7.7 MANAGEMENT AGREEMENTS. Any management agreement and/or service contract entered into by the Association will be terminable by the Association without cause and without payment of a termination fee upon ninety (90) days' or less written notice, and the term of such management agreement will not exceed the period of one (1) year, renewable by agreement of the parties to such agreement for successive one (1) year periods. In the event of the termination of the management agreement, as provided herein, the Association shall enter into a new management agreement with a new management agent prior to the effective date of the termination of the old management agreement. Any decision to establish self-management by the Owners Association shall require the prior consent of Owners of Units to which at least seventy percent (70%) of the votes are allocated and the approval of first mortgage holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of the Association.

8.1 AMENDMENTS TO DECLARATION; APPROVAL OF OWNERS AND MORTGAGEES.

a. The consent of the Owners of Units to which at least seventy percent (70%) of the votes in the Association are allocated, the approval of First Mortgagees holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages and, upon written request, notice to all First Mortgagees holding mortgages on Units, shall be required to add or amend any material provisions to this Declaration or to the By-Laws which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Elements;
- (4) Insurance or fidelity bonds;
- (5) Rights to use of the Common Areas;
- (6) Responsibility for maintenance and repair of the Units and Common Elements;
- (7) Expansion of the Project;
- (8) Boundaries of any Unit;
- (9) Convertibility of Units into Common Elements, or Common Elements into Units;
- (10) Leasing of Units;
- (11) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit; or
- (12) Any provisions which are for the express benefit of first mortgage holders, insurers, or guarantors of first mortgages.

b. The consent of Owners of Units to which at least seventy percent (70%) of the votes in the Association are allocated and the approval of First Mortgagees holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages, shall be required to:

- (1) partition or subdivide any Unit.

(3) use hazard insurance proceeds for losses to any property for other than the repair, replacement or reconstruction of such property.

c. The consent of Owners of Units to which at least one hundred percent (100%) of the votes of the Association are allocated and the approval of First Mortgagees holding mortgages on Units which have at least sixty seven percent (67%) of the votes of Units subject to mortgages shall be required to terminate or abandon the residential status of the project by act or omission, except for a termination due to destruction or condemnation.

d. Any amendment which would change the percentage or fraction of interest of the Unit Owners in the Common Elements will require the consent of Owners of seventy percent (70%) of the votes allocated in the Association and the approval of First Mortgagees holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages.

e. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration or By-Laws, and who does not deliver or post to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request.

f. Unless otherwise provided in this Paragraph 8.1 or elsewhere in this Declaration, any of the provisions herein may be amended by the consent of Owners of Units to which at least seventy percent (70%) of the votes in the Association are allocated, but no amendment shall affect the rights given to the Declarant herein without the consent of the Declarant.

8.2 CORRECTION OF ERROR. Declarant reserves, and shall have the continuing right, until the end of the Construction Period, without the consent of the other Owners or any Mortgagee to amend this Declaration or the By-Laws for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration or Federal Housing Administration.

8.3 OWNERSHIP OF COMMON PERSONAL PROPERTY. Upon termination of the Construction Period, as defined herein, Declarant shall execute and deliver a bill of sale to the Association transferring all items of personal property located on the Premises, furnished by Declarant, and intended for the common use and enjoyment of the Residential Unit Owners and occupants. No Owner shall have any other interest and right thereto, and

8.5 NOTICE. All notices, demands or other notices intended to be served upon an Owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such Owner in care of the Unit number and Building address of such Owner. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association, shall be sent by ordinary or certified mail, postage prepaid, to Waterwood, Box 125, Huntsville, Texas 77340, until such address is changed by a notice of address change duly recorded in the San Jacinto County Deed Records.

8.6 CONFLICT BETWEEN DECLARATION AND BY-LAWS. Whenever the application of the provisions of this Declaration conflict with the application of any provision of the By-Laws adopted by the Association, the provisions or application of this Declaration shall prevail.

8.7 INVALIDATION OF PARTS. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration and the application of any provision, paragraph, sentence, clause, phrase or word in any other circumstance shall not be affected thereby.

8.8 OMISSIONS. In the event of the omission from this Declaration of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof, or any part hereof, then such omitted matter shall be supplied by inference.

8.9 GENDER. That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed and delivered this 9th day of June, 1986.

BAY HILL POINT DEVELOPMENT, INC.

By 
GEORG K. STAGE, President

THE STATE OF TEXAS §
§
COUNTY OF SAN JACINTO §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared GEORG K. STAGE, President of BAY HILL POINT DEVELOPMENT, INC. known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was executed for the purposes and consideration therein expressed and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9th day of June, A.D., 1986



Martha J. Smith
NOTARY PUBLIC in and for
The State of Texas.

John Gaskins
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS

1986 SEP 29 AM 10:34

FILED FOR
RECORD