CONDOMINIUM DECLARATION
FOR
MARSHALL PLACE CONDOMINIMUMS
SECTION THREE

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, Nicholas Company, a partnership, here in after called "Declarant", is the owner of retail property situated in the County of Jefferson, State of Texas, being described as follows:

Lot One (1) in Block Five (5) of the MARSHALL PLACE, UNIT II, ADDITION to the city of Beaumont, Jefferson County, Texas, as per map or plat there of record in the office of the County Clerk of Jefferson County, Texas, reference to which is hereby made for all purposes.

Which property is described and depicted on the map or plat thereof prepared by Schamburg & Polk, INC., dated February 10, 1978 marked **MARSHALL PLACE TOWNHOUSES, SECTION THREE**, EXHIBIT "A" which by reference is made a part hereof; and

WHEREAS, Declarant, as Developer, desires to establish a condominium regime under the condominium Act of the State of Texas;

WHEREAS, Declarant has executed plans for the construction of Two (2) two-story buildings and One (1) one-story building and other improvements appurtenant thereto on the property described in said Exhibit "A", which when completed shall consist of eighteen (18) separately designated condominium units: and

WHEREAS, Declarant does hereby establish a plan for the individual ownership in fee simple of estates consisting of the area or space contained in each of the apartment units in the Three (3) building improvements and the ownership by the individual and separate owners thereof, as tenants in common of all of the remaining property which is hereinafter defined and referred to as the general common elements.

1. Definitions, unless the context shall expressly provide otherwise.
   (a) “Apartment” or “apartment unit” means an individual airspace unit which is contained within the perimeter walls, floors and ceilings of a building as shown on said map.
   (b) “Condominium units” means one individual airspace unit, together with the interest in the general common elements a pertinent to such unit.
   (c) “Owner” means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more condominium units.
   (d) “Majority of unit owners” means the apartment owners with 51% or more of the votes weighed so as to coincide with percentages assigned in this declaration.
   (e) : General common elements " means and includes:
      (1) the land on which the buildings are located;
      (2) the foundation, columns, girders, beams, supports, main walls and roofs;
      (3) the common green areas, yards, gardens, parking area, fences, storage spaces, private streets, private service drives, walks and service easements;
      (4) the installations consisting of the equipment and materials making up central services such as power, light, gas and the light;
      (5) all other parts of the property necessary or convenient to its existence, maintenance and safety, are normally in common use.
   (f) “Limited common elements” means a part of the general common elements reserved for the exclusive use of the owner of a condominium unit; the heating and air conditioning systems serving one condominium unit only and the garage parking area and patio areas indicated on map as a pertinent limited elements to a specific unit only shall be deemed limited common elements.
   (g) “Entire premises " or “property” means and includes the land, the building, all improvements and structures thereon, and all rights, easements and appurtenances belonging there too.
   (h) “Common expenses" means and includes:
      (1) all songs lovely assist against the general common elements by the managing agent or board of managers;
      (2) expenses of administration and management, maintenance repair or replacement of the general common elements;
      (3) expenses agreed upon as common expenses by the owners;
      (4) expenses declared common expenses by provisions of this declaration and by the bylaws;
      (5) special assessments for capital improvements to, and extraordinary maintenance and repair oh, all private streets within the entire premises;
      (6) a monthly assessment of each owners pro rata share of the monthly utilities which may be metered or sold to the condominium regime as a unit;
      (7) special assessments for ordinary maintenance and repair, as well as special assessments for extraordinary maintenance and repair, as well as capital improvements for, I'll switch, collection systems and water lines shared in common by, and servicing in common, all owners within the condominium regime which are not dictated to, and accept it by, the city of Beaumont and which are in easements so dedicated and accepted.
   (i) “Association of unit owners” or “association” means a Texas nonprofit association, the bylaws of which shall govern the administration of this condominium property, and which shall have the obligation to reasonably maintain and repair private streets and sewage collection systems and water lines shared in common by all of the owners of the condominium units, the members of which shall be all of the owners of the condominium units.
   (j) Map, survey map, or plans means and includes the engineering survey of the land locating there on all of the improvements, the floor and elevation plans and any other drawings are diagrammatic plans depicting a part of our all of the improvements, same being here with filed, consisting of one sheet labeled exhibit hey, and incorporated herein.

2. The map shall be filed for record simultaneously with the recording of this declaration as a part here of, and prior to the first conveyance of any condominium unit. Such map shall consist of and set forth 1 the legal description of the surface of the land; 2 the linear measurements and locations, with reference to the exterior boundaries of the land, of the buildings and all other improvements built are to be built on said land by declarant; And 3 floor plans and elevation plans of the buildings built or to be built their own showing the location, the building deck designation, the apartment designation and the linear dimensions of each apartment unit, and the limited common elements.

3. The real property is hereby divided and the following separate fee simple estates:

(A) 18 fee simple estates consisting of 18 separately designated apartment units, each such unit identified by number and by building symbol or designation on the map, the apartments in each building being described as follows:

building a- containing 5 apartments, numbered units one, two, three, 4 and five, the size, dimensions, location and boundaries of each being detailed on the survey plat herewith filed marked exhibit A

building B containing 6 apartments, numbered units 6, 7, 8, 9, 10 and 11, the size, dimensions, location and boundaries of each being detailed on the survey plat herewith filed marked exhibit A period

building C- containing 7 apartments numbered units 12, 13, 14, 15, 16, 17 and 18, the size, dimensions, location and boundaries of each being detailed on the survey plat herewith filed marked exhibit A.

(B) The remaining portion of the entire premises, referred to as the general common elements, which shall be held in common by the owners, the interests of each therein being here and after set forth and each undivided interest being a pertinent to one of the 18 apartment units.

(C) The percentage of ownership in the common elements allocated to each apartment is as follows:

4. A portion of the general common elements is set aside and reserved for the exclusive use of individual owners, such areas being the limited common elements. The limited common elements reserved for the exclusive use of the individual owners or the automobile parking spaces, storage spaces and patio spaces, which are shown on the map. Such spaces are allocated and assigned by the declarant to the respective condominium units as indicated on said exhibit A comma the patios assigned to each apartment unit being designated by the apartment unit number preceded by the letter P and in a life manner the garage assigned to each apartment unit being designated by the apartment unit number preceded by the letter G. In like manner heating and air conditioning systems servicing only one condominium unit shall be limited common elements. Such limited common elements shall be used in connection with the particular apartment unit, to the exclusion of the use thereof by the other owners except by invitation.

5. Each apartment and its undivided interests and and to the general common elements of pertinent thereto shall be inseparable and may be conveyed, leased or encumbered only as a condominium unit.

6. Every deed, lease, mortgage, trust deed or other instrument may legally describe a condominium unit by its identifying apartment number and building symbol or designation as shown on the map, followed by the words, “Marshall place townhouses, Section 3” and by reference to this recorded declaration and map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect the general common elements.

7. Declarant shall give written notice to the tax assessors of the creation of condominium ownership of this property, as is provided by law, so that each apartment unit and its percentage of undivided interest in the general common elements shall be deemed a separate parcel and subject two separate assessment and taxation.

8. A condominium unit may be held and owned by more than one person as joint tenants, Rs tenants in common, or in any real property tenancy relationship recognized under the laws of the state of Texas.

9. The general common elements shall be owned in common by all of the owners of the apartment units and shall remain undivided and no owner shall bring any action 4 partition or division of the general common elements. Nothing contained herein shall be construed as a limitation of the right of partition of a condominium unit between the owners thereof but such partition should not affect any other condominium unit.

10. Each owner shall be entitled to exclusive ownership and possession of his apartment. Each owner may use the general common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other owners.

11. Each apartment shall be occupied and used by the owner only as and for a single family residential dwelling for the owner, his family, his social guests or his tenants.

12. If any portion of the general comment elements encroaches the pond and apartment unit or units, a valid easement for the encroachment and for the maintenance of sign, so long as it stands, shall and does exist. If any portion of an adjoining apartment unit or units encroaches upon any portion of the general common elements, a valid easement for the encroachment and for the maintenance of saying so long as it stands, shell and does exist. For title or other purposes such encroachment and easements should not be considered or determined to be incumbrances either on the general common elements or the apartment units.

13. Subsequent to the completion of the improvements described on the map, no labor performed or materials furnished and incorporated in an apartment unit with the consent or at the request of the owner thereof, or his agent or his contractor, or subcontractor, shall be the basis for filing of a lien against the general 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 apartment unit of any other owner, or against the general common elements for construction performed, or for labor, materials, services or other products incorporated in the owners apartment unit at such owners request.

14. The administration of this condominium property shall be governed by bylaws of the nonprofit association, he ran after named and here and after referred to as the association. A copy of such bylaws is here too attached and exhibit B hear of, which exhibit B is incorporated herein by reference; And shall be deemed adopted by declarant as sole owner of the property herein described, and all owners shall be bound thereby. Declarant may, at its election, cost to be formed a Texas nonprofit corporation bearing said name, in which event such nonprofit corporation shall be composed of owners of condominium units as herein set out, and such nonprofit corporation shall thereafter act and do things to be done by association, and the see it nonprofit corporation, if formed, shall be bound by, adopt and observe as its bylaws, the said bylaws here too attached. Association as here used she'll refer to the member owners as a group, both before and after incorporation. In the event of incorporation, a certified copy of the certificate of incorporation of such association shall be recorded and which shall provide that three persons shall act as a board of managers and shall serve as the managers until their successors have been elected and qualified. An owner of a condominium unit, upon becoming an owner, shall be a member of the association and shall remain a member for the period of his ownership. The managing agent shall be declarant or whatever person or entity to whom

declarant for purposes of resale may convey all its apartment units in this regime which at the time of such conveyance it has not sold to owner occupants, and the managing agent shall perform all of the duties of the board of managers until 1 year after the execution hereof, unless all of the units in this regime are leased or sold prior to the end of such year at which earlier time declarant shall have the option to cease being such managing agent.

15. The owner shall have the irrevocable right, to be exercised by the managing agent, or board of managers of the association, to have access to each apartment unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common elements they're in are accessible they're from, or for making emergency repairs they're in necessary to prevent damage to the general or limited common elements or to another apartment unit or units.

16. And the owner shall maintain and keep in repair the interior of his own apartment, including the fixtures they're on. An owner shall also maintain all electric lines, wires, conduits or systems and the heating and air conditioning systems serving his apartment unit, whether within or without same. An owner shall also maintain all the plumbing serving his apartment unit, and maintenance of sewer lines serving more than one apartment unit and running from the end of an apartment units single sewer line to the point where such sewer line becomes the property of the city of Beaumont shall be common expenses.

17. An owner shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. No owner shall in any way alter, modify, add to or otherwise perform any work whatever upon any of the common elements, save with written consent of the board of managers first obtained.

18. An owner shall not be deemed to own the undecorated and or unfinished surfaces of the perimeter walls, ground floor and roof surrounding his apartment unit, nor shall such owner be deemed to own the utilities running through his apartment unit which are utilized for or serve more than one apartment unit, except as a tenant in common. An owner, however, shall be deemed to own and shall maintain the inner decorated and or finish surfaces of the perimeter and interior walls, floors, ceilings, doors, windows and such other elements consisting of paint, wallpaper and other such finishing materials.

19. Each owner shall comply strictly with the provisions of this declaration, the bylaws and the decisions and resolutions of the association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by managing agent or board of managers on behalf of the owners or, in a proper case, by an aggrieved owner.

20. This declaration shall not be revoked, nor shall any of the provisions herein be amended unless all of the owners of the condominium units, and all of the holders of any recorded mortgages or deeds of trust covering or affecting any or all condominium units unanimously consent and agree to such revocation or amendments by instrument duly recorded.

21. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the managing agent or board of managers of the association shall from time to time determine is to be paid by all of the owners, including declarant, to provide for the payment of all estimated “common expenses” as that phrase is defined above growing out of our connected with the maintenance and the operation of the general common elements, which some may include among other things, cost of management, taxis, assessments, insurance contracts purchased pursuant to the terms hereof ensuring the buildings and the owners thereof and their mortgages against such risk as may be insured against under the terms hereof, landscaping and care of grounds,, and lighting, repairs, and renovations, garbage collection wages, water charges, legal and accounting fees, management fees, expenses and liabilities incurred by the managing agent or board of managers under or by reason of this declaration the payment of any deficit remaining from a previous period, the creation of a reasonable contingency are other reserve or surplus funds as well as other costs and expenses

relating to the general common elements. The omission or failure of the board to fix the assessment for any month should not be deemed A waiver, modification or a release of the owners from the obligation to pay.

The managing agent or board of managers shall obtain and maintain insurance of the type and kind required by a majority of the unit owners, issued by a responsible insurance company authorized to do business in the state of Texas or by more than one responsible insurance company authorized to do business in the state of Texas should the saying not be available for purchase from one such company and such insurance may be written in the name of the managing agent or in the name of the board of managers, as trustee or trustees for each apartment owner and each apartment owners mortgaging, if any, or it may be written in such other names as a majority of the unit owners may direct. Such insurance should not prejudice the rights of each owner to ensure his apartment on his own account and for his own benefit the association may also be named in such insurance policy or policies as insureds if required by the insuring company or companies. Such insurance shall provide for a standard, non-contributory mortgage clause in favor of each first mortgage. It shall also provide that it cannot be cancelled by either the insured or the insurance company until after 10 days prior written notice to each first mortgage. Said managing agent or board of managers shell, upon request of any first mortgage fee, furnish a certified copy of such policy and the separate certificate identifying the interest of the mortgage or. All policies of insurance shall provide that the insurance they're under shall be invalidated or suspended only in respect to the interest of any particular owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under such policy, as to the interests of all other insured owners not guilty of any such act or omission, should not be invalidated or suspended and shall remain in full force and effect. Determination of maximum replacement value of all condominium units (for insurance purposes) shall be made annually by one or more written appraisals, copies of which shall be furnished for with to each mortgage of a condominium unit. In addition, each owner shall be notified of such appraisals.

22. All owners shall be obligated to pay the estimated assessments imposed by the board of managers or managing agent of the association to meet the common expenses and acceptance of a deed for a unit whether expressly stated in such deed or not, shall be dean to covenant and agree to pay to the association of unit owners the assessments provided for herein. Except for insurance premiums the assessment shall be made basically pro rata according to each owner's percentage interest in and to the general common elements but not necessarily in such exact proportion if the board of managers deem such improper or unfair. Assessments for insurance premiums shall be based upon the proportion of the total premiums that the insurance carrier on a condominium unit bears to total coverage. Assessments for the estimated common expenses, including insurance, shall we do monthly in advance or on or before the 5th day of each month period failure to pay by the 15th day of each month shall require the imposition and assessment of a late charge of $5. The managing agent or board of managers shall prepare and deliver, or mail, regularly at least every three months to each owner and itemized statement showing the various estimated or actual expenses for which the assessments are made.

Declarants shall not be liable for assessments prior to the sale or lease of all units.

Contribution for monthly assessments shall be prorated if the ownership of a condominium unit commences on a day other than on the first day of the month.

23. 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 common elements or by abandonment of his apartment.

24. All songs assessed but unpaid for the share of common expenses chargeable to any condominium unit, including interest thereon at 10% her annum, show constitute a lien on such unit superior (prior) to all other lanes and encumbrances, except only for:

(a) text and special assessments liens in favor of any Assassin's unit, and

(b) all songs unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory psalms as may be provided by such encumbrances, and including additional advances made thereon prior to the arising of such a lien.

To evidence such lean the board of managers or managing agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit and a description of the condominium unit. Such a notice shall be signed by one of the board of managers or by the managing agent and may be recorded in the office of the clerk and recorder of Jefferson County, Texas. Such lane for the common expenses shall attach from the date of the failure of payment of the assessment.

Search lien may be enforced by foreclosure of the defaulting owner's condominium unit by the association in like Manor as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure, the owner shall be required to pay the cost and expenses of such proceedings, the cost and expenses for filing the notice or claim of lien and all responsible attorney's fees. The owner shall also be required to pay to the association for reasonable rental for the condominium unit during the period of foreclosure, and the association shall be entitled to a receiver to collect the sign. The association shall have the power to bid on the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey sign.

To secure and enforce the payment of said assessments, and for the auxiliary and cumulative enforcement of saddling here and above created, declarant has granted, sold and conveyed and by these presents does grant, Seal and convey unto Morris beck, trustee, of Jefferson county, Texas, and his substitute or successors, each of the here and before describe condominium units. To having to hold the said premises, together with the rights, privileges and appurtenances unto the said trustee, and to his substitutes or successors forever. And declarant does hereby bind itself, its successors and assigns, to warrant and forever defend the said premises unto the said trustee, his substitutes, successors and assigns forever, against the claim or claims of all persons claiming or to claim the same, or any part thereof, four and upon the following trusts, terms, covenants and agreements, to wit:

declarant, it successors and assigns may hereafter become justly indebted to the association for the herein before mentioned assessments and should declarant, its successors and assigns do and perform all of the covenants and agreements herein contained and make prompt payment of the assessments hereby secured as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect; but in the event of default in the payment of any assessment hereby secured, in accordance with the terms hereof it shall thereupon, or at anytime thereafter, be the duty of the trustee, or his successor or substitute, at the request of the association(which request is hereby conclusively presumed) to enforce this trust and make sale of the condominium unit against which the assessment is made, as provided in article 3810, revised civil statues of Texas 1925, after notice as provided in said article (but without any other notice than is required by said article 3810) , and make do conveyance to the purchaser or purchasers, with general warranty binding the declarant, its successors and assigns; and out of the money arising from such sale, the trustee acting shall first pay all expenses of advertising CCO and making the conveyance, and then to the association the full amount of assessments owing, interest thereon, and reasonable attorney's fees, rendering the balance of the seals price, if any, to the owner of such unit prior to such sale, his heirs or signs; And the recitals in the conveyance to see if purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to say and seal shall be presumed to have been performed and such sale and conveyance shall be conclusive against the owner of such unit prior to such sale, his heirs and assigns.

In case of the absence, resignation, death, inability, failure or refusal of the trustee herein named or any substitute trustee appointed here under to act, or in the event of the association she'll deem it desirable to remove without cause the trustee or any substitute trustee and appoint another to execute this trust, then in any of such events the association

shall have the right and is hereby authorized and empowered to appoint a successor and substitute without any formality other than an appointment and designation in writing; and this appointment shall vest in him, as trustee, the estate and title in and to all said units and he shelled thereupon hold, possesses and execute all the rights, title, powers and duties herein conferred upon the trustee named herein; and the right to appoint a successor or substitute trustee shall exist as often and whenever from any of said causes any trustee, original or substitute, cannot or will not act, or has been removed without cause. The exercise or attempted exercise of power of sale herein contained should not exhaust see it power of seal and shall not prevent any subsequent exercise thereof.

It is especially agreed that, in the event of a foreclosure under the powers granted herein, the person in possession of the unit sold showed there upon become the tenant at will of the purchaser at such foreclosure sale, And should tenant refuse to surrender possession of said unit upon demand, the purchaser shield thereupon and his or her option, be entitled to institute and maintain the statutory action for forcible detainer and procure a right of possession they're under. This possession shall in no way preclude the purchaser from bringing any other legal action for the possession of said unit and the brain of 1 character of action shall not preclude the other and same may be exercised separately or simultaneously.

The amount of common expenses assessed against each condominium unit should also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment or unpaid common expenses should be maintainable without foreclosing or waiving the lien securing the same.

Any incumbrance per holding a lien on a condominium unit may pay any unpaid common expense payable with respect to such unit, and upon such payment such encumbrancer should have a lien on such unit for the amounts paid of the same rank as the lien of his incumbrance.

25. Upon the written request of any owner or any incumbrance or prospective incumbrance Sir of a condominium unit, the association, by its managing agent or board of managers, shall issue a written statement setting forth the unpaid common expenses, if any, with respect to the subject unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments are for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the association in favor of all persons who rely there on in good faith. Unless such requests for a statement of indebtedness shall be complied with within 10 days, all unpaid common expenses which become due prior to the date of making such requests shall be subordinate to the lien of the person requesting such statement.

The grantee of a unit shall be jointly and severally liable with the granter for all unpaid assessments against the latter for his proportionate sheer of the common expenses up to the time of the grant or conveyance, without prejudice to the grantees right to recover from the Grand Tour the amounts paid by the grantee therefore; provided, however, that the upon written request, any such prospective grantee shall be entitled to a statement from the managing agent or board of managers, 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 that such assessments become due, credit for advance payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the association. Unless such requests for a statement of indebtedness shall be complied with within 10 days of such requests then such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the subject unit.

Upon the sale or conveyance of an apartment, all assessments against the co-owner for his pro rata share in the expenses as herein described and levied shell first be paid out of the sale price, or by the purchaser, and preference over any other assessments or charges of whatever nature except the following:

(a) assessments, liens and charges in favor of the state and any political subdivision thereof for taxes past due and unpaid on the apartment; And
(b) amount due under first mortgage instruments duly recorded.

26. Any owner should have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. At first mortgage shall be one

which has first and paramount priority under applicable law. The owner of a condominium unit may create a second mortgage on the following conditions:

That any such second mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other payments created by this declaration and by the bylaws; (2) that the mortgage under any second mortgage show release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his rights, title and interest in and to the proceeds under all insurance policies upon said premises, which insurance policies were affected and placed upon the mortgaged premises by the association. Such release shall be furnished forthwith by a second mortgagee upon written request to the association.

27. In the event any owner of a condominium unit shall wish to sell, lease or rent the same, and shall have received a bona fide offer therefore from a prospective purchaser or tenant, the remaining owner shall be given written notice thereof, together within executed copy of such offer and the terms thereof. Such notice and copy shall be given to the board of managers for all of the owners. The remaining owners through the board of managers, or a person named by them, shall have the right to purchase or lease or rent the subject apartment upon the same terms and conditions as set forth in the offer therefore, provided written notice of such election to purchase or lease is given to the selling or leasing owner, and a matching down payment or deposit is provided to the selling or leasing owner during the 10 day. Immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease.

And the event any owner shall attempt to sell, rent, or lease his condominium unit without affording to the other 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 lease C. Possession of our residence in a condominium unit by any other person than the record owners, their lineal descendants are relatives of their lineal descendants, continuing for a period of 10 days shall be deemed, for this purpose, to constitute a leasing or renting of the condominium unit, whether or not any consideration has been paid therefore; and in such event, the board of managers may require the removal of such occupants, it being hereby agreed that the board of managers, in such event, shall be entitled to the possession of the condominium unit upon demand therefore of and from such occupant, with or without notice to the record owners of; And in the event of failure to surrender such possession, the board of managers may institute and maintain forcible entry and detainer proceedings for the possession of such unit, and have gonna retain such position until the record owner thereof, or his purchaser (in event of sale, all prerequisites of this declaration having been complied with) retakes physical possession of such premises. During any time when the board of managers shall have possession of such unit here under, the record owner and all of his guests, licensees and invitees shall be deemed to waive any claim for damages to person or property in or on the units.

The sub leasing or sub renting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the 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 an owner to subject his interest in the project parcel to a trust deed, mortgage, or other security instrument.

The failure of or refusal by the board of managers to exercise the right to sow purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

The provisions of this article 27 shall not apply to any sale lease or rental is made by declarant at any time hereafter whether same be a “first sale or leading" or “” resale or relating”” of any apartment unit. Declarant shall have the further right to use any apartment unit as office and sales area and display advertising signs at the premises at any time hereafter until all units have been sold by declaration.

The right of first refusal, as provided herein, show extend and run from the date of execution of this declaration for the period of the lives of the now living descendants of H. G. Nichols, whichever of said descendants shall live the longer, plus 18 years.

Except as is otherwise provided in paragraph 28, and except upon a transfer of title to a public trustee, or to a first mortgage, each granter of a condominium unit, upon transferring or conveying kiss interest, shall incorporate in such instrument of conveyance and agreement that the grantee carry out the provisions of the" right of first refusal" as provided in this paragraph.

28. In the event of any default on the part of any owner under any first mortgage which entitled the holder thereof to foreclosed same, any cell under such foreclosure, including delivery of AD to the first mortgage in lieu of such foreclosure shall be made free and clear of the provisions of paragraph 27, and the purchaser (are guaranteed under such deed in lieu of foreclosure) of such condominium unit shall be there upon and thereafter subject to the provisions of this declaration and bylaws. If the purchaser following such foreclosure sale (or guarantee under deed given in lieu of such foreclosure) shall be then holder of the first mortgage, or its nominee, the said holder or nominee made thereafter sale and conveyed the condominium unit free and clear of the provisions of paragraph 27, but its grantee showed their upon and thereafter be subject to all of the provisions thereof.

The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased interest to a device by wheel or his heirs at law under intestacy laws shall not be subject to the provisions of paragraph 27.

If an owner of condominium unit can establish to the satisfaction of the managing agent or board of managers that a proposed transfer is not a sale or lease, then such transfers should not be subject to the provisions of paragraph 27.

29. Upon written request of any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of any condominium unit, the Managing Agent or Board of Managers of the Association 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 paragraph 27, that proper notice was given by the selling or leasing owner and that the remaining owners 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 paragraph 28, that the deeds were in fact

given in lieu of foreclosure and were not subject to the provisions of

paragraph 27;

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer is not or will not be subject to the provisions of paragraph 27;

Such a certificate shall be conclusive evidence of the facts contained therein.

30. 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 condominium unit is declared and expressly made.

The 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 the non-profit

corporation, If same be hereafter organized, their true and lawful

with the property upon its destruction or obsolescence as is hereafter

and Secretary, shall have full and complete authorization, right and

Instrument with respect to the interest of a condominium unit owner

granted. Repair and reconstruction of the improvement(s) as used in

substantially the same conditions in which it existed prior to the

having the same vertical and horizontal boundaries as before. The

Association for the purpose of repair, restoration or replacements

accordance with the provisions set forth hereinafter.

disaster, the Insurance proceeds, if sufficient to reconstruct the fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed.

(b) If the insurance proceeds are Insufficient to repair and reconstruct the improvement(s), and if such damage is not more than reconstructed by the Association, as attorney-in-fact, using the pro-all of the owners and their condominium units. Such deficiency assess-percentage interest in and to the general common elements and shall The Association shall have the authority to cause the repair or restore-purpose notwithstanding the failure of an owner to pay the assessment. A lien on his condominium unit and may be enforced and collected as is as attorney-in-fact, shall have the absolute right and power to sell deficiency assessment within the time provided, and if not so paid, unit of the delinquent owner shall be sold by the Association. The and disbursed by the Association, as attorney-in-fact, in the following order:

(1) For payment of the balance of the lien of any first mortgage.

(2) For payment of taxes and special assessment liens in favor of any assessing entity.

(3) For payment of unpaid common expenses;

(4) For payment of junior liens and encumbrances In the order of

(5) The balance remaining, if any, shall be paid to the condominium unit owner.

(c) if more than 50% of all of the general common elements, not including land, are destroyed or damaged, and half of said condominium units, or more, do not voluntarily, within one hundred days thereafter, make provision for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association’s president and secretary, the entire remaining premises shall be sold by the Association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map and the By-Laws. The Insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each unit owner's Interest (as such Interests appear on the policy or policies) and such divided proceeds by this declaration, each such accounts representing one of the condo-citation, and shall be further identified by the number of the apart-Association, as attorney-In-fact shall use and disburse the total account to another, toward the full payment of the lien of any first mortgage against the condominium unit represented by such separate amount of the proceeds derived from the sale of the entire property. Such apportionment shall be based upon each condominium unit owner's percentage Interest in the general common elements. The total funds from one account to another, by the Association, as attorney-in-sub-paragraph (b)(1) through (5) of this paragraph.

If the owners representing an aggregate ownership interest of 3/4 of the condominium units, or more adopt A plan for reconstruction, which plan has the unanimous approval of all first mortgages, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan but not sooner than 30 days after written notice year old.

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 the owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in paragraph 24.

In addition, thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment

within the time pro-vided, and if not so paid, the Association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the Association. The proceeds derived from sale of such condominium unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order

(d) The owners representing an aggregate ownership Interest of three-fourths (3/4ths) of the condominium units covered by this declaration, or more, may agree that the general common elements of the property or obsolete and that the same should be renewed or reconstructed. In such instance, then the expense thereof shall be payable by all of the owners as common expenses; Provided, however, that any owner not agreeing to such renewal or reconstruction may give written notice to the association that such unit shall be purchased by the association for the fair market value thereof. If such owner and the association can agree on the fair market value thereof, then such sale shall be consummated within 30 days thereafter. If the parties are unable to agree, the date when either party notified the other that he or it is unable to agree with the other shall be the "Commencing date" from which all periods of time mentioned herein shall be measured. Within 10 days following the

commencement date, each party shall nominate in writing (and give notice of such nomination to the other party), the appraiser who shall be a member of the Beaumont Real Estate Board. If either party fails to make such a nomination, the appraiser nominated shell within five days after default by the other party appoint and associate with him another appraiser(to be selected from the Beaumont real estate board). If the two appraisers designated by the parties, are selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another appraiser (to be selected from the Beaumont real estate board) to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate 2 persons (each of whom shall be a member of the Beaumont real estate board), and from the names of the four persons so nominated shall be drawn by lot by any judge of any court of record in Texas, and the name so drawn shall be the umpire. The nominations from whom the umpire is to be drawn by light shall be submitted within 10 days of the failure of the two appraisers to agree, which in any event shall not be later than 20 days following the appointment of second appraiser. The decision of the appraisers as to the fair market value or in the case of their disagreement, the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the association and the owners. The sale shall be consummated within 15 days thereafter, and the association, as attorney in fact, shall disperse such proceeds as is provided in subparagraph (b) (1) through (5) of this paragraph.

(e) the owners representing an aggregate ownership interest of 3/4 of the condominium units covered by this declaration, or more, may agree that the general common elements of the property are obsolete and that the same should be sold. In such instance, the association shall for with record a notice setting 4th such fat or fax, upon the recording of such notice by the association’s president and secretary, the entire premises shall be sold by the association, as attorney in fact for all of the owners, free and clear of the provisions contained in this declaration, the map and the bylaws. The sales proceeds shall be apportioned between the owners on the basis of each owner’s percentage interest in the general comment elements, and such apportioned proceeds shall be paid into as many separate accounts as there are units covered by this declaration, each such account representing one condominium unit. Each such account shall be in the name of the association, and shall be further identified by the number of the apartment and the name of the owner period from each separate account, the association as attorney in fact, shall use and disperse the total amount(of each) of such funds, without contribution from one fund to another, for the same purposes and in the same order as is provided in subparagraph (b) (1) through(5) of this paragraph.

31. Prior to the first conveyance of any condominium unit, Declarant shall execute and deliver a bill of sale to the Association, transferring all items of personal property located on the entire premises and furnished by Declarant, which property is Intended for the common use and enjoyment of the condominium unit owners and occupants. The Association shall hold title to such property for the enjoyment of the condominium unit owners and occupants. No owner shall have any other interest and right there too, and all such right and interest shall absolutely terminate upon the owner’s termination of possession of his condominium unit.

32. 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 apartment number and building address of such owner. All notices, demands, or other notices intended to be served upon the Managing Agent, or the Board of Managers of the Association, or the Association shall be sent by ordinary or certified mail, postage prepaid, 3679Calder, Beaumont, Texas, until such address is changed by a notice of address change duly recorded.

33. If any of the provisions of this Declaration or any paragraph, validity of the remainder of this Declaration and the application of any other circumstances shall not be affected thereby.

34. The provisions of this Declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Texas and to all other provisions of law.

35. That whenever used herein, unless the context shall otherwise the singular, and the use of any gender shall include all genders.

EXECUTED this____,1978

NICHOLS COMPANY, A PARTNERSHIP

By:

Nichat5H.G. Nichols, ↑

a Partner

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

BEFORE ME, the unders1gned authority, on this day personally appeared H. G. Nichols, , known to me to be the person and partner whose name is subscribe to the foregoing instrument, and acknowledged to me that he executed the same as the act of NICHOLS COMPANY, a partnership of which he is a partner, for the purposes and consideration expressed and in the capacity. therein stated, and that he was authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of

,1978.

JEFFERSON COUNTY, TEXAS

Commissica Expirac

12-5-79