

foreclose upon such Owner's Unit as provided hereinafter.

Each Assessment, Personal Charge and any late charges, penalties, interest, reasonable attorneys' fees, court costs and other collection expenses shall be a personal debt of the Owner against whom these are levied and assessed. All such foregoing Assessments, Personal Charges and other related sums owed or incurred by an Owner (hereinafter collectively referred to as "Owner Debt") shall be secured by a lien in favor of the Association, together with the unconditional right, power and authority of sale in favor of the Association; which said lien and power of sale are hereby granted, conveyed and created by each Owner in favor of the Association in each and every interest (and all appurtenant rights and privileges thereto) of each Owner; said lien being absolute, senior and superior to all other liens and security interests, except only for:

- [i] *ad valorem* taxes and special assessments levied and assessed by any governmental and taxing authorities;
- [ii] liens securing sums due payable or for record prior to the time such Owner Debt becomes due; and
- [iii] first lien purchase money deeds of trust or mortgage granted or created by each owner against his Unit.

Such lien may be enforced by the Association by foreclosure of such lien against the defaulting Owner's Unit, in accordance with the exercise of powers of sale in deeds of trust or mortgages as provided in Texas Property Code Section 51.002, in its present form, as amended from time to time, or in any other manner permitted by applicable law. In the event of any lien foreclosure, the Owner shall be required to pay to the Association its costs and expenses incurred by such foreclosure, including, without limitation, reasonable attorney's fees, foreclosure costs and other collection expenses. The Association shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease and/or sell, same to any person or entity with the proceeds of such lease or sale benefitting the Association in accordance with this Declaration.

In addition, a vendor's lien may be hereby reserved and retained against each Unit in favor of the Association to secure the full payment of any and all Owner Debt. This vendor's lien, which shall be subordinate to those items listed above in Section 11.9 [i], [ii], [iii] hereof, may be enforced by the Association via all appropriate judicial proceedings, and the costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees, court costs and other collection expenses, shall be a personal obligation of such defaulting Owner.

Notwithstanding any provisions contained in this Declaration and the other Instruments to the contrary, the Association shall also have the right to recover a money judgment against any defaulting Owner without enforcing, foreclosing, or waiving any lien rights, recourses and remedies securing such Owner Debt, such rights, recourses and remedies being fully cumulative in all respects with all the Association's other rights, recourses, and remedies.

The Association shall not be required to record in the official public records of Real Property for Montgomery County, Texas, any notice, affidavit, claim or statement of delinquency as to any

Owner delinquent in the payment of any Owner Debt due hereunder in order to create, attach or perfect any lien rights, recourses and remedies granted to the Association hereunder, instead, all such liens, rights, recourses and remedies shall be fully operative, effective and enforceable at all times to the extent hereinabove set forth.

Any Owner Debt arising hereunder and the lien rights, recourses and remedies securing payment and performance of the same shall continue in full force and effect until such time as the debt is paid or discharged in full. each Owner, by accepting a Warranty Deed to his Unit shall be deemed to covenant, stipulate and agreed to and further ratify and confirm the creation, attachment and perfection of all such lien and enforcement rights, recourses and remedies hereinabove set forth in all respects.

11.10 Statement of Unpaid Assessments and Personal Charges. Upon a written request therefore and the payment of a reasonable fee as determined by the Association, the Association shall furnish an Owner or the Mortgagee thereof with a written statement setting forth the amount of any unpaid Assessments and Personal Charges currently levied and assessed against such Owner's Unit. Said statement shall be furnished within a reasonable time period after the Association's receipt of the written request and fee therefore and shall be binding upon the Association and every Owner.

ARTICLE 12

Phased Development. The Declarant hereby reserves for itself only, the right, power and authority, but not the obligation, at its sole discretion, at any time and from time to time, and without prior notice, to annex to the Condominium Regime and submit to this Declaration in one or more phases, additional real property and any improvements situated thereon (hereinafter, the "Additional Phases"). The SHR Luxury Condominium Association, Inc., shall cooperate with Declarant in the addition of additional phases and the subsequent reallocation of fractional interests. All of the real property which may be annexed to the Condominium Regime is described on Exhibit F hereto.

12.1 Annex of Additional Phases. If any Additional Phase is annexed to the Condominium Regime, then the Additional Phase(s) shall be deemed included within the definition of the Property for all purposes under this Declaration. Any such expansion of the Property as authorized herein may be made by the recordation in the official public records of the Real Property for Montgomery County, Texas of a Supplemental Declaration regarding the Additional Phase(s). Any such Supplemental Declaration shall be executed solely by the Association without the joinder, consent or approval of Owners or any other person or entity. Any Supplemental Declaration shall contain a statement that the real property that is the subject of the Supplemental Declaration, constitutes an Additional Phase that is to become a part of the Property and subject to this Declaration.

12.2 Supplemental Declaration. Any Supplemental Declaration may contain such additions to, modifications of or amendments to this Declaration applicable to the Additional Phase(s) as may be necessary to reflect the different character, style or scope, if any, of the Additional Phase that is the subject of the Supplemental Declaration; provided, however, that in the event of any conflict between such additional provisions and the provisions of this Declaration, the provisions of this Declaration shall govern, rule, control and prevail, unless this Declaration is silent, in which event the provisions of the Supplemental Declaration shall, govern, rule, control and prevail. Additionally,

no Supplemental Declaration shall remove or reduce any real property described on Exhibit A hereto immediately prior to the recordation of such Supplemental Declaration. A Supplemental Declaration shall become effective upon recordation in the official public records of Real Property for Montgomery County, Texas.

12.3 Effect of Supplemental Declaration. Upon recordation of a Supplemental Declaration in the official public records of Real Property for Montgomery County, Texas, which annexes, submits and subjects an Additional Phase(s) to this Declaration as specified above, then:

- (a) the total number of Units in the Condominium shall be increased by the number of Units in the Additional Phase(s) added to the Property. There shall be no maximum number of Units that may be added by all Additional Phases to the Property;
- (b) the owners of Units in the Additional Phase(s) shall have undivided percentage interests in the Common Elements, Common Furnishings and Common Surplus, if any, in accordance with the provisions herein;
- (c) the Common Elements shall be enlarged, but an Owner's undivided percentage interest in the Common Elements of the Parcel on which the Owner's Unit is located shall not be diminished;
- (d) the Common Furnishings shall be enlarged and each Owner's undivided percentage interest therein shall decrease. The change in each Owner's undivided percentage interest in the Common Furnishings shall be reflected as an Exhibit to the Supplemental Declaration;
- (e) the budgeted sums for the payment of the Common Expenses shall increase proportionally upon the addition of any Additional Phases(s). However, an Owner's liability for the Common Expenses and undivided percentage interest in the Common Surplus shall decrease correspondingly;
- (f) the easements, restrictions, conditions, covenants, terms, provisions, reservations, liens, charges, rights, benefits and privileges set forth herein shall run with, and bind each Additional Phase and inure to the benefit of and be binding on any Owner in an Additional Phase in the same manner, to the same extent and with the same force and effect that this Declaration applied to the existing Owners subjected to this Declaration prior to recordation of the Supplemental Declaration in the official public records of Real Property for Montgomery County, Texas;
- (g) every Owner in the Additional Phase(s) shall be a member of the Association on the same terms and subject to the same qualifications, limitations, responsibilities and obligations as those SCRCA Members who are Owners immediately prior to the recordation of the Supplemental Declaration in the official public records of Real Property for Montgomery County, Texas;
- (h) the recordation of the Supplemental Declaration in the official public records of Real

Property for Montgomery County, Texas shall not alter the amount of the Lien for any Assessment pertaining to any Unit or its Owner prior to such recordation;

- (I) each Owner in the Additional Phase(s) shall be responsible for paying the Common Expense Assessment applicable to the Unit type specifically identified in each Owner's Warranty Deed;
- (j) in all other respects, this Declaration shall include and apply to the Additional Phase(s) made subject to this Declaration by the Supplemental Declaration and the Owners/Unit Occupants and Mortgagees of record thereof, with equal meaning, to the same extent and of like force and effect as if the Additional Phase(s) had been subjected to this Declaration at the time of the original recordation hereof; and
- (k) with respect to each Additional Phase, the Association shall have and enjoy all rights, powers, authority and easements reserved by the Association in this Declaration, plus any additional rights, powers, authority and easements set forth in the Supplemental Declaration for each Additional Phase.

12.4 Consent to Expand Condominium Regime. Upon recordation of a Supplemental Declaration in the official public records of Real Property of Montgomery County, Texas, which adds, submits and subjects an Additional Phase to this Declaration in accordance with this Declaration, each then-Owner and their successors in title shall, upon the addition of additional Common Furnishings, automatically become vested with his appropriate undivided percentage interest in such Common Furnishings, if any, in accordance with Exhibit F hereof. To further evidence the Owner(s) approval of this Article XII, each Owner does hereby:

- (a) consent to, approve and authorize the right in the Association to expand the Condominium and to amend, restate and/or supplement this Declaration as contemplated herein;
- (b) consent to, approve and authorize the changing of his undivided percentage interest in the Common Furnishings, if any, and in the Common Surplus; and
- (c) appoint the Association as the Owner's (and the Owner's executors, administrators, legal representatives, heirs, successors and assigns) attorney-in-fact to so amend, restate and/or supplement this Declaration. This power of attorney is coupled with an interest in the Association and is therefore irrevocable, but it shall expire by its own terms only upon termination of the Condominium.

12.5 Additional Phases Optional. Nothing maintained in either this Declaration or the Exhibits hereto shall create any obligation, duty or commitment on the part of the Association to either submit the real property described on Exhibit F hereto to condominium ownership, construct additional condominium units thereon or in any other way commit the Association to develop subsequent phases or additions to the Property in accordance with any past, prior, present, pending, intended, expected or perceived or any other plan. Any reference herein to the Association's intentions as to Additional Phases shall in no way constitute, be deemed or considered a dedication,

reservation, limitation, covenant or agreement affecting the real property described on Exhibit A hereto.

ARTICLE 13

Insurance. The Association shall keep all of the Units, the Common Elements, the Limited Common Elements, the Common Furnishings, if any, and any other real and personal property of the Association insured for the benefit of all Owners and their respective Mortgagees of record and the Association as follows:

- (a) for the total amount, after application of all deductibles, of the replacement value thereof (excluding foundation and excavation costs against loss or damage by fire and lightning, and, by an extended coverage endorsement, by windstorm, hail, explosion, riot, civil unrest, damage from aircraft or boats or vehicles, smoke damage, vandalism, theft and malicious mischief; and
- (b) against any such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to projects similar in construction, general location, use and occupancy.

Replacement value shall be determined at least annually, or more frequently if so determined by the Association at the sole discretion of the Board of Trustees. Such determination shall be made by one of the insurers, or at the option of the Board of Trustees on behalf of the Association, by an appraiser, architect or contractor who shall be chosen by the Board of Trustees on behalf of the Association.

13.1 Liability Insurance. The Association shall procure and maintain, for the mutual benefit of the Association and all Owners, a general liability insurance policy against claims for personal injury, death or property damage arising out of or in connection with the use, ownership or maintenance of the Units, the Common Elements, the limited Common Elements, the Common Furnishings and any other real and personal property owned by the Association. Such insurance shall afford protection to such limits as the Board, acting on behalf of the Association, may deem reasonable and appropriate, it being agreed that a limit of not less than \$1,000,000.00 in respect to personal injury or death to one (1) or more persons or property damage as the result of any (1) occurrence is deemed reasonable and appropriate.

13.2 Directors and Officers Liability Insurance. The Association shall procure and maintain a policy of Directors and Officers liability insurance for Trustees and any other corporate Officers in such amount as the Board may decide on behalf of the Association, but for not less than \$2,000,000.00 per claim and/or aggregate occurrence.

13.3 Worker's Compensation. The Association shall procure and maintain such Worker's Compensation or other insurance coverage as and to the extent required by applicable law, upon each of the employees of the Association, if any.

13.4 Employees and Agents of the Board of Trustees. If reasonably available, in the judgment

of the Board acting on behalf of the Association, the Association shall procure and maintain insurance on behalf of any person who is an employee or agent of the Board and who has been retained and authorized by the Board to act on behalf of the Association, against any liability asserted against or received by him in such capacity or arising out of his status as such, specifically including an Errors and Omissions policy for the Manager.

13.5 Insurance Against Additional Risks. The Association may also procure insurance against such additional risks as the Association deems advisable and necessary for the protection of the Owners and the Property.

13.6 General Insurance Requirements. All insurance provided for herein shall be effectuated under valid and enforceable policies in forms which are reasonably satisfactory to the Association issued by insurers of recognized responsibility which are duly authorized to transact business in Texas, and distributed among such insurers in amounts reasonably satisfactory to the Association, not less than thirty (30) days prior to the expiration dates of the expiring policies thereto furnished in accordance with this Declaration, originals of the policies bearing notations evidencing due payment of premiums or accompanied by other evidence satisfactory to the Association shall be delivered to the Board on behalf of the Association pursuant to the terms and provisions hereof. All policies of insurance referred to herein shall contain appropriate waivers of subrogation for the benefit of the Association and all Owners.

13.7 Additional Named Insureds. All policies of insurance provided for in this Declaration shall name the Association and each of the Owners as insured, as their respective interests may appear, and also, with respect to the policies described herein, shall inure to the benefit of the holder of any Mortgagee, as the interest of any such Mortgagee may appear, by standard Mortgagee clause, without contribution, if obtainable. The loss, if any, under such policies shall be adjusted with the insurance companies by the Association in the case of any particular casualty resulting in damage or destruction not exceeding \$100,000.00 in the aggregate and, except as aforesaid, the loss, if any, under such policies shall be adjusted with the insurance companies by the Association and the holder of any mortgage, and the proceeds of any such insurance, as so adjusted, shall be payable to the Association. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of the Association, the Board, any Trustee, any Officer, the Manager, any employees or any Owners shall void such policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Each such policy issued by the insurer shall, to the extent reasonably obtainable, contain an agreement by the insurer that such policy shall not be canceled without at least sixty (60) days prior written notice to the Association and any Mortgagee named therein.

13.8 Blanket Coverage. The Property may, at the sole discretion of the Association, be insured under such blanket or umbrella insurance policies as may be available from time to time, unless prohibited by applicable law. The procurement of such coverage shall be deemed to constitute full compliance with the insurance requirements contained herein, provided that the coverage afforded by any such blanket or umbrella insurance policy includes protection against each of the risks or perils enumerated herein, with limits which are at least as high as would otherwise be required hereunder. The blanket or umbrella insurance premiums shall be allocated to the Owners hereunder as a Common Expense.

13.9 Inspection of Policies. A Certificate or copy of each policy of insurance in effect as to the Property shall be made available for inspection during normal business hours to all Owners or their authorized agents at the business offices of the Association.

ARTICLE 14

Damage, Destruction & Obsolescence.

14.1 Association as attorney-in-fact. Each Owner hereby irrevocably appoints the Association as his attorney-in-fact in his name, place and stead for the purpose of dealing with the Property upon its damage, destruction or obsolescence, as hereinafter provided. Such appoint of the Association as attorney-in-fact shall be coupled with an interest in the Association and is therefore irrevocable, but it shall expire by its own terms only upon termination of the Condominium. As attorney-in-fact, the Association shall have full and complete right, power and authority to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which is necessary and appropriate in order for the Association to exercise powers granted herein.

14.2 Repair and Reconstruction of Units and Common Elements. Any insurance proceeds which are paid to the Association because of damage or loss to all or any portion of the Condominium shall, be used by the Association to restore the Condominium to substantially the same existence and condition it was in prior to such damage or loss in accordance with the following:

- (a) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to repair, restore and reconstruct the improvements, shall be applied by the Association as attorney-in-fact to such repair and reconstruction, and the improvements shall be promptly repaired, restored and reconstructed. Any excess insurance proceeds shall be allocated by the Association to each Unit in the affected Building based upon the undivided percentage interest of such Unit in the Common Elements of the Parcel on which the Unit is located.
- (b) To the extent that any damage or loss is adequately covered by insurance, neither the Association, the Board of Trustees, any Trustee, any Officer, the Manager nor any Owner shall have a claim or cause of action for damage or loss against any responsible Owner or Unit Occupant, provided that this waiver of claim shall in no way prevent the Association from obtaining similar insurance coverage at similar premium cost in the future. To the extent that any damage or loss to the personal property or personal belongings of any Owner or Unit Occupant is adequately covered by insurance, such Owner or Unit Occupant shall not have any claim or cause of action for such damage or loss against the Association, the Board, any Trustee, any Officer, the Manager or any other Owner.
- (c) No damage to or loss of all or any portion of the Condominium shall relieve any Owner of his obligation to pay his proportionate share of the Common Expenses and other impositions as due, except as otherwise expressly provided herein.

- (d) If the insurance proceeds are insufficient to repair, restore and reconstruct any Building(s), and if such damage is not more than sixty-six and two-thirds ($66\frac{2}{3}$) of such Building(s), not including the land, then such damage or destruction shall promptly be repaired, restored and reconstructed by the Association as attorney-in-fact using the proceeds of insurance and the proceeds of a Special Assessment to be levied against all the Owners in accordance with this Declaration. The Association shall have the right, power and authority to cause the repair, restoration and reconstruction of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure, neglect or refusal of any Owner to pay such Special Assessment. The Special Assessment provided for such herein shall be the debt of each Owner and a lien on his Unit and may be enforced and collected in accordance with this Declaration.
- (e) If more than sixty-six and two-thirds ($66\frac{2}{3}$) of any Building(s), not including the land, requires repair, restoration and reconstruction because of a casualty against which it is insured, then the Owners representing eighty percent (80 %) of the total, eligible votes by the Members of the Association may elect not to repair, restore and reconstruct such Building(s). Upon such election and approval, the Association shall forthwith record a notice setting forth such matters in the official public records of Real Property for Montgomery County, Texas; and upon the recordation of such notice by the Association's President and Secretary, the remaining Building(s) shall be sold by the Association as attorney-in-fact for all of the Owners, free and clear of this Declaration and the other Instruments.

The insurance proceeds shall be collected by the Association, and such proceeds shall be allocated by the Association to each Unit in the affected Building(s) based upon the undivided interest of such Unit in the Common Elements of the Parcel on which the Unit is located, and paid into either one global account, with an accounting thereof for each Owner, or into separate account(s), one (1) account per Owner. Under either arrangement, each such account shall be in the name of the Association, and shall be further identified by either or both the applicable Unit(s) identification number and/or the name(s) of the Owner(s) thereof, or by designating the Association as attorney-in-fact for the applicable Unit(s) and respective Owner(s). There shall be added to such separate account(s) the apportioned amounts of the proceeds derived from the sale of the Building(s). Such apportionment shall be based upon each Owner's undivided percentage interest in the Unit specifically identified in his Warranty Deed. The total funds in each account shall be used and disbursed, without contribution between one (1) account to any other account, by the Association as attorney-in-fact for the same purposes and in the following order:

- [i] for payment of *ad valorem* taxes and special assessment liens in favor of any governmental assessing entity;
- [ii] for payment of the balance of the lien of any first lien purchase money mortgage;
- [iii] for payment of any unpaid Common Expenses and Special Assessments;

[iv] for payment of junior liens and encumbrances ranked in the order of their priority;

[v] the balance remaining, if any, shall be paid to the Owner; and

[vi] if the Owners representing eighty percent (80%) of the total votes eligible to be voted by the Members of the Association fail, neglect or refuse to vote not to reconstruct a Building or Buildings in accordance this Declaration, then all of the Owners shall be bound to reconstruct such Building(s) using the proceeds of insurance and the proceeds of a Special Assessment, if necessary, to be levied and assessed against all of the Owners in accordance with this Declaration. The Association shall have the right, power and authority to cause the repair, restoration and reconstruction of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure, neglect or refusal of any Owner(s) to pay the Special Assessment. The Special Assessment provided for herein shall be debt of each Owner and a lien on his Unit and may be enforced and collected in accordance with this Declaration.

14.3 Damage or Destruction to Common Furnishings. In the event of any damage or destruction to the Common Furnishings other than by ordinary wear and tear, the Association shall promptly cause such damage to be repaired and shall use any available insurance proceeds for such purpose. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, then the Association shall levy and assess a Special Assessment upon each of the Owners in accordance with this Declaration. In the event the damage or destruction was caused by the intentional or negligent act or omission of an Owner, members of his family, their guests, tenants or invitees, the cost of such repair or the amount of such deficiency shall be a Personal Charge to such Owner to be paid in accordance with this Declaration.

ARTICLE 15

Condemnation or Eminent Domain.

15.1 Proceedings. In the event of a taking in condemnation or by eminent domain of all or any portion of the Property, each Owner and all Mortgagees of record shall be entitled to timely notice thereof; and each Owner shall be entitled to participate in the proceedings incident thereto, unless otherwise prohibited by applicable law.

15.2 Allocation and Distribution of Awards.

- (a) Unless otherwise required by applicable law at the time of such taking any award made therefore shall be disbursed to the Association as attorney-in-fact for all of the Owners. Such appointment of the Association as attorney-in-fact shall be coupled with an interest in the Association and is therefore irrevocable, but it shall expire by its own terms only upon termination of the Condominium Regime. Any dispute as to the proper allocation of condemnation proceeds between the Owners shall be determined by distributing such proceeds based upon an appraisal of the fair market-

value-of each party's respective interest in the Property by two (2) reputable and established Texas real estate appraisers, one of which shall be chosen by a majority of the Owners eligible to vote as Members of the Association, and the other which shall be chosen by the Board of Trustees on behalf of the Association. The aforesaid two (2) appraisers shall elect a third reputable and established Texas real estate appraiser and the determination of such third appraiser shall be conclusive as to all parties.

- (b) The proceeds of any such award shall be allocated between the Parcels then constituting the Property. Any dispute as to the proper allocation of condemnation proceeds between such Parcels shall be determined by distributing such proceeds based upon an appraisal of fair market value of each Parcel by two (2) reputable and established Texas real estate appraisers, one of which shall be chosen by a majority of the Owners eligible to vote as Members of the Association, and the other which shall be chosen by the Board of Trustees on behalf of the Association. The aforesaid two (2) appraisers shall elect a third reputable and established Texas real estate appraiser and the-determination of such third appraiser shall be conclusive as to all parties. The proceeds allocated to each Parcel shall be allocated by the Association to each Unit based upon the undivided percentage interest of such Unit in the Common Elements of the Parcel on which each Unit is located and shall then be distributed to each Owner.
- (c) In the event of a partial taking in condemnation or by eminent domain, the Association shall arrange for the necessary repair, restoration and reconstruction of any other remaining portion of the Property, in accordance with the original design thereof, at the earliest possible date. If such repair, restoration and reconstruction in accordance with such original design are not permissible under the laws then in force, then the Association shall nevertheless repair and restore the premises as is nearly and reasonably possible to its conditions immediately prior to such taking. The Association is expressly authorized to pay any excess cost of such restoration as a Common Expense, and to levy and assess a Special Assessment, if necessary, in the event that available Association funds are insufficient for such purpose. In the event that any such sums are received by the Association in excess of the cost-of repairing and restoring the Condominium, such excess proceeds shall be allocated, by the Association to each Unit in the affected Building based upon the undivided percentage interest of such Unit in the Common Elements of the Parcel on which..the Unit is located and shah then be distributed to each Owner.
- (d) in the event of a partial taking in which any portion of the Property is eliminated or not restored, the proceeds allocable to such portion, less the proportionate share of said portion in the cost of debris removal and disposal, shall be allocated by the Association to each Unit in the affected Building based upon the undivided percentage interest of such Unit in the Common Elements of the Parcel on which the Unit is located, and then shall be distributed to each Owner.

ARTICLE 16

Mortgagee Protection. No provision of this Declaration, the Bylaws, Rules & Regulations or other Instruments shall be construed to grant to any Owner, or any other party, any priority over any rights of First Mortgagees of the Units pursuant to their first mortgages in the case of the distribution to Owners of the insurance proceeds or condemnation awards for losses to or for a taking of Units or the Common Elements or any portions thereof.

16.1 Priority of Lien. The Association's lien upon any Unit for delinquent Assessments shall be subordinate to the lien of any Mortgagee of record upon such Unit made in good faith and for value; provided, however; that a lien may be created after the foreclosure of any such deed of trust or mortgage on the interest of the person or entity acquiring a Unit at such foreclosure sale to secure all amounts levied and assessed to such person or entity, as an Owner, after the date of such acquisition of title as permitted under applicable law.

16.2 Status of Lien. In the event a Mortgagee of record forecloses upon a Unit, the purchaser at such foreclosure sale, if such purchaser is not the Mortgagee of record or an affiliate or subsidiary thereto, shall be liable for any Assessments levied and assessed by the Board upon such Unit prior to such acquisition of title. The association shall also remain entitled to recover all unpaid Assessments from the Owner whose Unit was foreclosed upon.

16.3 Mortgagee Consent. Prior to the occurrence of any of the following events, the approval of any Mortgagee of record Which has recorded its deed of trust or mortgage in the official public records of Real Property for Montgomery County, Texas and has provided written notice thereof to the Association, must be obtained:

- (a) the termination of the Condominium status of the Property, except for abandonment provided by statute in the case of a substantial loss to the Units and to the Common Elements;
- (b) the partition or subdivision of any Unit or the Common Elements;
- (c) the decision as to whether or not to repair, restore and reconstruct a Condominium Building or Buildings in the event that such Building(s) becomes more than seventy-five (75%) percent destroyed or damaged;
- (d) a change in a Unit's undivided percentage interest in the Common Elements of the Parcel on which such Unit is located as described on Exhibit E hereto; provided, however, that Units in Additional Phases may be allocated different undivided percentage interests in the Common Elements of the Parcels on which such additional Units are situated by the recordation of a Supplemental Declaration without the approval of any Mortgagees of record; and
- (e) any Amendment or modification to this Declaration, the Bylaws or other Instruments that materially affects the rights or liens of any Mortgagees of record.

ARTICLE 17

Third-Party Liens. Any liens against an Owner's rights, privileges and interest in the Property shall be limited to the fights, privileges and interests of such Owner in his Unit only, and shall not entitle any lienholder to assert any claim against the property interest of any other Owner, the Units, the Common Elements, the Limited Common Elements, the Common Furnishings, if any, or any real and personal property of the Association. Notwithstanding the foregoing, each Owner remains liable for any liability pertaining to his property interest in a Unit, all Assessments and all Personal Charges.

17.1 Notice of Liens. Each Owner shall give the Association written notice of every lien upon his property interest in a Unit, other than liens for non-payment of Assessments in favor of the Association, within ten (10) days after the Owner receives notice thereof.

17.2 Protection of Condominium Property. All liens against an Owner, other than for deeds of trust, mortgages, taxes or Assessments as expressly authorized and permitted in this Declaration, shall be satisfied or otherwise removed within thirty (30) days from the attachment date thereof. In the event of any of the following:

- (a) a threatened sale of the Condominium Property or any portion thereof, or of the property interest of any Owner;
- (b) should the use and enjoyment of any portion of the Property by any Owner be threatened by reason of any lien, claim or charge, including a mechanic's lien, against the property interest of any other Owner; or
- (c) should proceedings be instituted to effectuate any such sale or interference;

then, any Owner, acting on his own behalf or through the Association, or the Association, acting on behalf of any one (1) or more Owners, may, but shall not be obligated to pay, discharge or compromise the lien, claim or charge without inquiring into file proper amount or validity thereof and, in such event, the Owner whose interest was subjected to the lien, claim or charge, shall forthwith pay the amount so paid or expended to the Owner or the Association, or whomever shall have paid, discharged or compromised the lien, claim or charge, together with such reasonable attorneys' fees, court costs and other costs as he or it may have occurred.

No Owner shall permit his interest in may funds from time to time in possession of the Association to be subjected to any garnishment, attachment, turnover, levy, lien, claim, charge or other legal process except as to the lien or other interest of a Mortgagee of record. An Owner shall promptly restore any funds held by the Association with respect to his property interest to the extent depleted by any such garnishment, attachment, turnover, levy, lien, claim, charge or other legal process, and shall reimburse the Association for all reasonable attorneys' fees, court costs and all other costs incurred with respect thereto. All *ad valorem* taxes and Assessments due upon and pertaining to an Owner's property interest shall be promptly paid before becoming delinquent. The Association may, at its discretion, pay any such delinquent sums, which shall then constitute a Personal Charge against the Owner responsible therefore.

ARTICLE 18

Amendment. The Declarant reserves the right to amend the Instruments as long as there is no Owner other than the Declarant.

18.1 Amendments by the Board of Trustees. The Board, acting on behalf of the Association, for so long as the Association owns one (1) Unit, hereby reserves and retains the right, power and authority to unilaterally amend this Declaration as follows:

- (a) at any time as may be necessary to conform this Declaration to the requirements of applicable law, or as may otherwise be requested by any applicable federal, state, or local governmental agency or authority;
- (b) at any time to annex Additional Phases to the Condominium Regime in accordance with this Declaration; and
- (c) at any time to correct any typographical errors or omissions.

Any such amendments to this Declaration shall become effective upon execution of a legal instrument by the Association setting forth the full text of such amendment, together with the appropriate recordation data of this Declaration, and the subsequent recordation of such legal instrument in the official public records of Real Property for Montgomery County, Texas.

18.2 Amendments by Owners. At such time as there is an Owner other than the Declarant, this Declaration may be amended by the Members of the Association at any regular or special meeting of the Members in accordance with this Declaration or the Bylaws, but requiring no less than the affirmative vote of at least sixty-seven percent (67%) of the Owners, provided, however, that any such amendment shall require prior written approval by First Mortgagees and shall not be effective unless and until the required percentage of First Mortgagees have so approved the Amendment.

An Amendment may not create, increase reduce or otherwise modify the obligations imposed by this Declaration on the Declarant, or create, increase, reduce or otherwise modify the rights and Special Declarant Rights granted by this Declaration to the Declarant without the written agreement of the Declarant; and also shall not increase the number of Units, change the boundaries of a Unit, alter or destroy a Unit or Limited Common Element, change a Unit's Allocated Interest, or change the use restrictions on a Unit unless the amendment is approved by one hundred percent (100%) of the votes in the Association. The Declarant may, without a vote of the Owners or approval of the Association, amend this declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

At such time as there is an Owner other than the Declarant, no amendment to the Instruments shall change the Percentage Interests, the liability for Common Expenses, the rights to Common Profits, the votes in the Association appertaining to any Unit, the fights of the Declarant, or the rights to Limited Common Elements appurtenant to a Unit except to the extent expressly permitted or

required by the Act or this Declaration. After twenty (20) years have elapsed from recordation, this Declaration may be amended by the Association in accordance with its decision-making process, but requiring not less than the agreement of fifty-five percent (55%) of the votes in the Association.

Each such amendment of this Declaration shall be evidenced by an instrument in writing, duly recorded and signed by any two (2) Officers of the Association's Board of Trustees, setting forth in full the text of such amendment, the appropriate recording data of this Declaration and certifying that such amendment has been approved by the affirmative vote of sixty-seven percent (67%) of the Owners-eligible to vote as members of the Association. Said amendment shall become effective upon recordation in the official public records of Real Property for Montgomery County, Texas.

Subject to the rights reserved to the Association in this Declaration, the Owners shall not amend this Declaration in such manner as to:

- (a) materially change the configuration or size of any existing Unit;
- (b) materially change the appurtenances to any Unit; or
- (c) change the undivided interest which each Owner has in the Common Elements of the Parcel on which each Owner's Unit is located without the affirmative unanimous vote of all Owners eligible to vote as Members of the Association and upon the unanimous written consent of all Mortgagees of record. Furthermore, the Owners shall have no right, power or authority to enact an amendment to this Declaration which materially affects the rights or liens of any Mortgagee of record without first obtaining the written consent of each such affected Mortgagee of record.

Notwithstanding anything contained in this Declaration or the other Instruments to the contrary, an amendment to this Declaration may not alter or destroy a Unit without the affirmative unanimous vote of Owners eligible to vote as Members of the Association and the unanimous written consent of their Mortgagee of record, if any.

ARTICLE 19

Termination. The Condominium may be terminated and removed from this Declaration and the other Instruments upon the affirmative, unanimous vote of one hundred percent (100%) of all Owners eligible to vote as members of the Association, and upon the unanimous written consent of all Mortgagees of record. Such termination shall be effective upon the recordation in the official public records of Real Property for Montgomery County, Texas, of a Termination Agreement, duly executed, ratified and signed by any two (2) Officers of the Board of Trustees of the Association, certifying that the aforesaid vote has been taken, and that the all of the Owners and their respective Mortgagees of record have elected to terminate the Condominium. If, pursuant to a Termination Agreement, the Real Property constituting the Condominium is to be sold following termination, the Termination Agreement must set forth the terms of the sale.

19.1 Other Causes for Termination. The Condominium may be terminated and removed from the Declaration and the other Instruments upon the total condemnation of the Property in accordance the

Declaration.

19.2 Effect of Termination. Upon termination of the Condominium as provided herein, the Association shall file suit in a court of competent jurisdiction in Montgomery County, Texas for partition of the Property. Any costs incurred by the Association in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, shall constitute a Common Expense. If the Association fails, neglects or refuses to file such suit within sixty (60) days of the aforesaid vote, then any Owner shall have legal standing to file such suit on behalf of the Association, and such Owner shall be reimbursed by the Association for any costs which were reasonably incurred, including, without limitation, reasonable attorneys' fees and court costs, in connection with bringing any such suit.

The Association, on behalf of the Owners, may contract for the sale of Real Property in the Condominium, but the contract is not binding on the Owners until it is approved in accordance with the provisions of this Declaration. If the Real Property constituting the Condominium is to be sold following termination, upon termination, the Property vests in the Association as Trustee for the holders of all interests in the Units, and the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds distributed, the Association shall continue to exist and retains the powers it had before termination.

Unless the termination agreement specifies differently, as long as the Association holds title to the Real Property, each Owner and the Owner's successors in interest have an exclusive right to occupy the portion of the Property that formerly constituted the Owner's Unit. During that period of occupancy an Owner and the Owner's successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration. If the Property constituting the Condominium is not to be sold following termination, upon termination, title to the Property vests in the Owners as tenants in common in proportion to their respective interests, and liens on the Units shift accordingly. While the tenancy in common exists, an Owner and the Owner's successors in interest have an exclusive right to occupy the portion of the Property that formerly constituted the Owner's Unit.

Foreclosure or enforcement of a lien or encumbrance against the entire Condominium does not of itself terminate the Condominium Regime, and foreclosure or enforcement of a lien or encumbrance against a portion of the Condominium does not withdraw that portion from the Condominium, unless the mortgage being foreclosed was recorded before the date that this Declaration was recorded and the Mortgagee did not consent in writing to this Declaration.

19.3 Association as Trustee. Under Section 82.115 of the Act, a third person dealing with the Association in the Association's capacity as a trustee may assume without inquiry the existence of trust powers and their proper exercise by the Association.

19.4 Rescission of a Termination Agreement. Upon the affirmative, unanimous vote of one hundred percent (100%) of all Owners eligible to vote as members of the Association, and upon the unanimous written consent of all Mortgagees of record, the Owners may rescind a termination agreement and reinstate this Declaration in full force and effect immediately before the election to terminate. To be effective, the rescission agreement must be in writing, executed by the Owners, and

recorded in the official public records of Real Property for Montgomery County, Texas.

ARTICLE 20

Miscellaneous Provisions.

20.1 Rights and Powers of Declarant's Successors or Assignees. The rights and powers reserved to or exercisable by the Declarant under the Instruments or Condominium Act may be exercised by any successor or assignee of the Declarant:

- (a) who acquires title from Declarant by foreclosure or other judicial sale or deed in lieu of foreclosure; or
- (b) to whom the Declarant specifically assigns such rights and powers.

20.2 Captions. The captions, paragraph or section headings are used solely as a matter of style and convenience and shall neither define, limit or expand any term or provision of this Declaration.

20.3 Gender, Number. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

20.4 Exhibits. Exhibits A, B, C, D, E, F, G, and H attached to this Declaration are an integral part of this Declaration.

20.5 Construction, Validity and Severability of Declaration and Bylaws. It is the intention of the Declarant that the terms and provisions of this Declaration and the other Instruments shall be deemed to be independent and severable so that if any term or provision is invalid, void or unenforceable under any applicable law, ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby. The rule against perpetuities may not be applied to defeat any provision of this Declaration, the Bylaws, or Rules & Regulations of the Association. If there is a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent that the Declaration is inconsistent with the Act, Title to a Unit and Common Elements is not made unmarketable or otherwise affected by a provision of unrecorded Bylaws or by reason of an insubstantial failure of this Declaration to comply with the Act.

20.6 Choice of Law. This Declaration and the other Instruments shall be governed by the laws of the State of Texas.

20.7 Interpretation. This Declaration and the other Instruments shall be liberally construed to effectuate the purpose of ensuring that the Condominium shall be operated, managed, administered, and maintained in a manner to optimize and maximize its enjoyment and utilization by each Owner, members of each Owner's family, their guests, tenants and invitees as a residential property.

20.8 No Common Enterprise. Neither this Declaration, the other Instruments, nor any of the Warranty Deeds shall be deemed to evidence a joint venture, partnership or other similar

arrangement, and no person or entity shall have the right to participate in the individual profits, if any, of any other person or entity arising out of the operation of the Condominium created hereunder.

There is hereby created and declared to be, and there shall continue to be a conclusive presumption that any violation or breach or any attempted violation or breach of the provisions of this Declaration and of the other Instruments cannot be adequately remedied by an action at law for the recovery of damages.

IN WITNESS WHEREOF, the Declarant, Lake Conroe Properties, LLC, a Texas limited liability company, has caused this instrument to be acknowledged as the Declaration of Condominium by William K. Mitchell, the General Partner of W & K Mitchell Family Limited Partnership, Managing Member of Lake Conroe Properties, LLC, who does hereby as its true and lawful attorney-in-fact acknowledge and deliver this Declaration as its act and deed, entered into and effective this 10th day of October, 2006.

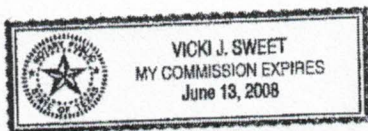
DECLARANT
LAKE CONROE PROPERTIES, LLC

By: William K Mitchell (partner)
William K Mitchell, General Partner of W & K Mitchell Family Limited Partnership, Managing Member of Lake Conroe Properties, LLC

STATE OF TEXAS

COUNTY OF MONTGOMERY

On this the 10th day of October, 2006, appeared on behalf of Lake Conroe Properties, LLC, a Texas limited liability company, William K. Mitchell, as general partner of W & K Mitchell Family Limited Partnership, Managing Member of Lake Conroe Properties, LLC, who does hereby as its true and lawful attorney-in-fact, being by me duly sworn, did say that he is the general partner of W & K Mitchell Family Limited Partnership, Managing Member of Lake Conroe Properties, LLC, a Texas limited liability company, and acknowledged the foregoing instrument to be the act and deed of the Declarant, and that he executed same as his free act and delivered same as such.



[Signature]
NOTARY PUBLIC - STATE OF TEXAS

EXHIBIT C

Common Elements and Limited Common Elements

Pursuant to ARTICLE VII, Section 7.3 of the Sunset Harbor Resort Luxury Condominium Regime Declaration of Condominium, the Common Elements of each Parcel of the Property include the following, except to the extent that any portion is designated as a Limited Common Element more fully described in Section 7.6 of the Declaration and set forth below, subject to being amended, restated or supplemented from time to time at the sole discretion of the Seven Coves Resort Condominium Association Board of Trustees:

- (a) all real property listed in Exhibit A upon which the Parcels are situated and all land adjacent thereto within its perimeters of the Property, including all trees, shrubbery, plants, greenbelts, playgrounds, paved areas, parcels and any storage facilities; but excluding any porch, patio or other appurtenance to a Unit that it is designated as a Limited Common Element for exclusive use of that Unit. The Parking Lot shall contain a minimum of thirty (30) Common Element parking spaces, with one (1) parking space assigned to each Unit by the Board of Trustees pursuant to this provision;
- (b) the foundations, beams, supports, girders, columns, bearing walls, non-bearing and bearing perimeter walls of the Building; all walls and partitions of the Building separating any Unit from corridors, stairs, and other mechanical spaces, excepting those finished portions of such walls as are within the interior of any Units; all floors and ceilings, exclusive of the finished flooring and finished ceiling which are within a Unit; the roof and any attic space;
- (c) all of the walk-ways, easements, steps, corridors and other means of access which are incidental thereto and which provide access to the Buildings;
- (d) the compartments, housings, tanks, pumps, fans, reservoirs, apparatus, features, equipment, facilities or installations over, over, across, through, around and under Parcels for central services, including but not limited to water, gas, electrical, sewage, intercom, satellite, modem, pipes, ducts, flues, chutes, gutters, downspouts, drains, cables, wires, telephone, data and other utility lines which service one or more Units;
- (e) all other elements of the Condominium generally of common use or necessary for the existence, maintenance, operation, administration and safety of the Property; and
- (f) all that part of the Condominium which is not part of any of the Units and is not a Limited Common Element as better defined in ARTICLE VII, Section 7.6.

Pursuant to ARTICLE VII, Section 7.6 of the Sunset Harbor Resort Luxury Condominium Regime Declaration of Condominium, the Limited Common Elements of each Parcel of the Property include the following, except to the extent that any portion is designated as a Common Element more fully

described above in Section 7.3 of the Declaration, subject to being amended, restated, or supplemented from time to time at the sole discretion of the Seven Coves Resort Condominium Association Board of Trustees:

- (a) the porches, patios, balconies and yards of any Unit;
- (b) the walkways, easements, steps, corridors and other means of access which are incidental thereto and which provide access to any Unit;
- (c) the exterior staircases that lead to any Unit, including storage areas if any
- (d) the skylights, porch lights, exterior faucets and garden hoses of any Unit.

EXHIBIT D

Fractional Interests

FRACTIONAL INTEREST OF COMMON ELEMENTS

End units which are 3 bedroom units numbered 101, 110, 201, 210, 301, and 310 each have a 4.082 % undivided interest in the Common Elements.

All other units which number 102 through 109, 202 through 209, and 302 through 309 each have a 3.146% undivided interest in the Common Elements.

EXHIBIT E - Part 1

Declaration of Covenants, Conditions and Restrictions

LAKE CONROE PROPERTIES, LLC
a Texas Limited Liability Company

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is executed by Lake Conroe Properties, LLC, a Texas limited liability company (hereinafter referred to as the "Declarant"), with its principal business office and corporate address located in Travis County, Texas, at 11200 Centennial Drive, Austin, Texas 78726, effective immediately, on behalf of the real property to be designated as:

SUNSET HARBOR RESORT LUXURY CONDOMINIUM

(the "Property") and which is described by metes and bounds on the attached plat and situated in Tract 2, Abstract 7 of the Elijah Collard Survey in Montgomery County, Texas.

WITNESSETH:

WHEREAS, the Declarant deems it to be in the interest of all present and future Owners to institute a general development plan for the entirety of the subject Property;

WHEREAS, the Declarant expects the general development plan to safeguard property values over an extended period of time; and,

WHEREAS, Covenants, Conditions and Restrictions (hereinafter the "CCRs") are imposed in accordance with common law doctrines as well as in reliance on statutory and case law of the State of Texas.

NOW THEREFORE, in consideration of these recitals, the Declarant does hereby submit the Property, with all improvements thereon, whether heretofore or hereafter constructed, and all appurtenances thereto, to the provisions of these CCRs, and

DECLARES that these CCRs shall govern the Property, including without limitation, the Common Elements and Common Furnishings, if any, and shall be effective until such time as they are amended, modified, and/or restated by SHR Luxury Condominium Association, Inc., (hereinafter the "Association") acting through its Board of Trustees (hereinafter the "Board") and shall apply to and be binding upon all Owners, who shall at all times obey, adhere to and comply with these CCRs, and who shall use their best efforts to ensure that these CCRs are fully and faithfully observed and kept by all Owners, their families, guests, invitees, tenants, and other Occupants.

ARTICLE I

Architectural Control. There is hereby created a Board-appointed Architectural Control Committee, (hereinafter the "ACC") comprised initially of three (3) people: Bill Mitchell, Mike Guinn and Debbie Buckley. Upon the death or resignation of any ACC member, the Board shall appoint a successor to fill such vacancy within thirty (30) days.

Architectural Approval. Any Owner with plans to remodel, renovate otherwise improve his Unit for the following reasons must first submit to the ACC for its' approval, in sufficient detail to satisfy its members, a written request with plans and specifications and shall obtain a written, dated receipt from the ACC for such delivery. Improvements requiring prior approval shall include, without limitation, the following:

- (a) any exterior addition or alteration to any Unit, including without limitation any residential improvement, building, roof, enclosure, extension, addition, screen, fence, all, shutter, awning, canopy, carport, tower, antennae or other structures; and
- (b) any permanent or semi-permanent landscaping, sprinklers, hoses, planters, wind chimes, mobiles, flags, poles, brackets, hooks, shelves, bird feeders, bird baths, fountains, lighting, speakers, swings, play or sport equipment, statuary or outdoor decor.

1.2 Plans and Specifications. All plans and specifications submitted as part of a written request to the ACC for any anticipated exterior improvement(s) to a Unit shall show all proposed and existing exterior improvements to the subject Unit; any adjacent fences and walkways; relevant exterior building elevations or roof pitch. Color scheme and exterior materials shall also be identified on such plans and specifications.

1.3 Approval Deadline. ACC approval and disapproval of a request for architectural approval shall be in writing, and delivered to the Owner within thirty (30) days from the date upon which the ACC received such request. Failure of the ACC to deliver written approval or disapproval of the request to the Owner within thirty (30) days after receipt by the ACC shall be deemed as an automatic approval of the request by the ACC and the Owner may proceed with the proposed exterior improvement(s).

1.4 Completion Deadline. Any ACC-approved improvement(s) to a Unit shall be completed within the time allotted by the ACC for completion or ninety (90) days after approval if no deadline is so stipulated by the ACC. Improvements not completed within the ACC-mandated time allotment or before the ninety (90) day deadline expires, may be prosecuted by the Declarant in any court having jurisdiction, as a nuisance, without claim or cause of action on the Owner's part against the ACC or the Association.

1.5 ACC Standard of Service. ACC members shall be held to a standard of good faith in carrying out their duties and responsibilities as agents of the Declarant's Board of Trustees, which shall exercise governing control and oversight of the ACC.