

CONDOMINIUM DECLARATION  
FOR  
THE BREAKERS, A CONDOMINIUM

(A Lake of the Ozarks Condominium)

THIS DECLARATION, made this 11th day of May 1984, by DENWAY INVESTMENT COMPANY, a Missouri corporation (hereinafter referred to as the "Declarant" or "Developer").

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of certain real property located in Camden County, Missouri, more particularly described on the attached Exhibit A, which is by this reference incorporated herein as if more fully repeated (hereinafter defined and referred to as "Condominium" or as "Property"); and,

WHEREAS, the Declarant intends by this Declaration to submit the real property described on the attached Exhibit A to the provisions of sections 448.1-101 to 448.4-120, Revised Statutes of Missouri, 1983, commonly known as the Uniform Condominium Act of the State of Missouri (hereinafter referred to as the "Act"); and,

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of real property estates consisting of the area or space contained in each of the air space units (hereinafter defined and referred to as "Unit" or "Units") in the improvements on said Condominium and a plan for the co-ownership by the individual and separate owners thereof (hereinafter defined and referred to as "Unit Owners"), as tenants in common, of all of the remaining property within said Condominium, which remaining property is hereinafter defined and referred to as "Common Elements";

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, use, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its grantees, successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees or assigns.

1. DEFINITIONS:

For the purpose of the within Declaration, the following definitions shall control:

(a) "Act" shall mean sections 448.1-101 to 448.4-120 R.S.Mo., 1983 commonly referred to as the Missouri "Uniform Condominium Act."

(b) "Allocated Interests" shall mean the undivided interest in the Common Elements, the Common Expense liability, and the votes in the Association allocated to each Unit.

(c) "Association" shall mean The Breakers Condominium Owners Association, Inc., a Missouri not-for-profit corporation, which shall govern this Condominium, and the members of which shall consist of all of the Unit Owners, including Developer.

(d) "Association Facilities" shall mean all items or things, whether real or personal, that are now or hereafter owned in fee simple or leased by the Association.

(e) "Building" shall mean any building or any part thereof now or hereafter located on and forming part of the Condominium and containing such Units as indicated by the Plat or Plans.

(f) "By-Laws" shall mean the By-Laws of the Association, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference as though more fully set forth.

(g) "Commission" shall mean the Clean Water Commission of the State of Missouri and the Missouri Department of Natural Resources, and their successors as may be created by law from time to time.

(h) "Common Elements" shall mean all portions of the Property except the Units, and shall include, but not by way of limitation:

1. The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, stairs, and stairways of the building or buildings as now or hereafter located and constructed;

2. The patios, yards, gardens, parking areas, pool and pool deck, clubhouse, boat docks, PWC docks, tennis court and storage spaces as now or hereafter located and constructed;

3. The installations, consisting of the equipment and materials making up central services such as power, light, hot and cold water, central heating and air conditioning, storm and sanitary sewer mains, sewage treatment plant(s), well(s), water line(s), as now or hereafter located and constructed;

4. The tanks, pumps, motors, fans, compressors, ducts, lines, pipes, and in general all apparatus and installations now or hereafter located, constructed and existing for common use;

5. All other parts of the Property, the Units necessary or convenient to its existence, maintenance and safety, as are normally now or hereafter in common use.

(i) "Common Expenses" shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves, including but not limited to:

1. All sums lawfully assessed against the Common Elements by the Executive Board or the Managing Agent;

2. Expenses of administration and management, maintenance, repair or replacement of the Common Elements and of the Association.

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

4. Expenses declared to be Common Expenses by provisions of this Declaration, its amendments, and the By-Laws of the Association.

(j) "Condominium" shall mean all of the land described on Exhibit A and all property and space thereon, all improvements and structures erected, constructed or contained therein or thereon, including the Building or Buildings, and all easements, rights and appurtenances belonging thereto and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners submitted to the provisions of the Act.

(k) "Declarant" or "Developer" shall mean Denway Investment Company, a Missouri corporation. In the event the Developer transfers the property prior to completion of the construction program, the term "Developer" shall include any transferee who acquires the property for the purpose of completing the construction as shown on the Plat or amended Plats or Plans.

(l) "Declaration" shall mean the within instrument by which the Property, as hereinafter defined, is submitted to the provisions of the Act and shall include such amendments, if any, to the within instrument as may be from time to time adopted pursuant to the terms hereof;

(m) "Executive Board" shall mean the Board of Directors of the Association.

(n) "Limited Common Elements" shall mean a part of the Common Elements reserved for the exclusive use of one or more but fewer than all the Units, and allocated by designation on the Plat.

(o) "Majority" or "Majority of the Unit Owners" except as otherwise defined and used in the By-Laws of the Association, shall mean those Owners, without regard to their number, who own more than FIFTY PERCENT (50%) in the aggregate of the Allocated Interests of the Condominium. Except as otherwise defined and used in the By-Laws of the Association, any specified percentage of the Unit Owners shall mean those Owners who, in the aggregate, own such specified percentage of the Allocated Interests of this Condominium.

(p) "Managing Agent" shall mean a person who may be engaged by the Executive Board to see to the day-to-day operation and maintenance of the Condominium in accordance with the policies set from time to time by the Executive Board.

(q) "Master Association" shall mean a not for profit corporation which exercises any or all of the powers set forth in paragraph 34 of this Declaration or in the By-Laws attached hereto as Exhibit "C" on behalf of one or more Condominiums or for the benefit of Unit Owners of one or more Condominiums.

(r) "Officer" shall mean the duly elected officers of the Executive Board and the Association, as provided for in the By-Laws attached hereto as Exhibit B.

(s) "Person" shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property, but in the case of a land trust, "Person" shall mean the beneficiary of the trust rather than the trust or trustee.

(t) "Plans" shall mean a drawing prepared by a registered architect or engineer of the Property, showing the location and vertical boundaries of each Unit, the Unit's identifying number, and all other information required by subsection 4 of Section 448.2-109 of the Act.

(u) "Plat" shall mean a plat or plats of survey prepared by a registered land surveyor, together with amendments thereto, of the Property and of all real estate, whether or not such real estate is subject to development rights, submitted to the provisions of the Act, the locations and dimensions of all

existing improvements thereon, and all other information required by section 448.2-109 of the Act.

(v) "Record" shall mean to file of record in the office of the Recorder of Deeds the Property of the county wherein is located;

(w) "Rental Agent" shall mean a person who may be engaged by the Executive Board to see to the day-to-day rental of a Condominium Unit in accordance with the policies set from time to time by the Executive Board and this Declaration.

(x) "Residential Purposes" shall mean use for dwelling and/or recreational purposes.

(y) "Sewer System" shall mean and refer to the wastewater disposal system and all sewer lines, pipes, fittings, valves, motors, tanks, pumps and other necessary components of the system.

(z) "Unit" shall mean a physical portion or the Property including one or more rooms occupying one or more floors, or a part or parts thereof, and designed and designated for separate ownerships or occupancy as a residential apartment for one family, and having lawful access to a public way;

(aa) "Unit Owner" or "Owner" shall mean the Declarant or other person or persons whose estate or interests individually or collectively aggregate fee simple absolute ownership of a unit or units, but does not include a person having an interest in a Unit solely as security for an obligation.

## 2. SUBMISSION OF PROPERTY TO THE ACT:

The Developer hereby submits the real property described in Exhibit A hereto attached, and made part of this Declaration by this reference, to the provisions of the Uniform Condominium Act of the State of Missouri, subject to the reservations, restrictions and easements contained in this Declaration, the By-Laws, and any and all supplements and amendments thereto which may be duly adopted and filed for record from time to time. All streets, drives, lanes, circles, boulevards, trails, cul-de-sacs and other ways commonly used for vehicular and pedestrian traffic, as now or hereafter located on the real property described in Exhibit A hereto are private streets, and no dedication to the public of such ways for vehicular and pedestrian traffic is intended, but same are hereby dedicated to the use and benefit of all Unit Owners, their grantees, heirs, personal representatives, agents, successors and assigns, and to their guests, invitees, business visitors and to all duly constituted public authorities in the performance of their official duties, for ingress

and egress over said private ways. The easements and dedications herein are expressly made subject to the Developer's rights reserved as set forth in Paragraph 32 of this Declaration.

3. DIVISION OF PROPERTY INTO UNITS AND ALLOCATION OF INTERESTS:

The real property described in Exhibit A and the improvements thereon are hereby divided into fee simple estates, each such estate consisting of a Lot or a separately designated Unit, the Limited Common Elements reserved to the use of such Unit as designated on the Plat and as set forth on Exhibit C, attached to this Declaration and made part hereof by this reference as though more fully set forth herein and the undivided percentage or fractional interest in and to the Common Elements appurtenant to each Unit. The percentage of interest in the Common Elements for each Unit shall be the percentage figure represented by a fraction whose numerator is the area of such Unit (in square feet) and whose denominator is the area (in square feet) of all Units in the Condominium at any given time. Each such Unit and the Owner of each such Unit shall be responsible for the Common Expenses of the Association in a percentage amount equal to the undivided percentage of fractional interest in and to the Common Elements appurtenant to that Unit. The number of votes in the Association to which each Unit Owner shall be entitled shall be computed by multiplying the percentage interest in the Common Elements for such Unit by 1,000. All votes allocated to a Unit shall be cast unanimously, and the Owners of a Unit jointly owned by two or more Persons shall agree among themselves as to how they shall cast the votes allocated to such Unit, as provided in Section 2.7.2 of the By-Laws attached hereto as Exhibit B, and incorporated herein by this reference.

4. PLAT AND PLANS:

(a) The Plat shall show those things required in Section 448.2-109 of the Act, and may be filed for record in whole or in parts or sections, from time to time, as the stages of construction of the Units and other improvements are substantially completed. The Plat or any part or section thereof depicting Units shall not be filed for record until the Building in which the Units are located has been substantially completed in order to permit the location and depiction thereon of all information required by Section 448.2-109 of the Act. The Plat shall contain the certificate of a registered and licensed surveyor, certifying that the Plat contains all information required by Section 448.2-109 of the Act and was made in compliance with the minimum standards for property boundary surveys as established by rule of the Missouri Department of Natural Resources, and that such Plat was prepared subsequent to substantial completion of the improvements. Each supplement and/or any amendment shall set

forth a like certificate when appropriate. In interpreting the Plat, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries. Upon exercise of a development right, Developer shall record either new Plats or Plans, as necessary to conform to the requirements of section 448.2-109 of the Act.

(b) Any Plans of the Units shall show or project those things required in Section 448.2-109 of the Act, and shall be certified by a registered and licensed engineer or architect.

#### 5. LIMITED COMMON ELEMENTS:

Portions of the Common Elements are reserved for the exclusive use of the Unit Owners of the respective Units, and such areas are referred to as "Limited Common Elements". The Limited Common Elements so reserved shall be identified on the Plat or Plans and shall be appurtenant to the Units as shown on the attached Exhibit C. Any balcony, stairwell, patio, deck, shutters, awnings, window boxes, doorsteps, stoops, porches and exterior doors and windows which are designed to serve a single Unit or which are accessible from, associated with or which adjoin a Unit, and any portion of any chute, flue, duct, wire, conduit, bearing wall, or bearing column which serves only that Unit, shall, without further reference thereto, be used in connection with such Unit to the exclusion of the use thereof by the other Owners of the Common Elements, except by invitation. No reference thereto, whether such Limited Common Elements are exclusive or non-exclusive, need be made in any deed, instrument of conveyance, or other instruments. All of the Unit Owners in the Condominium shall have a non-exclusive right in common with all of the other Unit Owners to the use of all Common Elements located within the Condominium.

#### 6. INSEPARABILITY OF A CONDOMINIUM UNIT:

Each Unit, the Allocated Interests for that Unit, and the appurtenant Limited Common Elements shall together comprise one Condominium Unit, shall be inseparable, and may be conveyed, leased, devised or encumbered only as one Condominium Unit.

#### 7. DESCRIPTION OF CONDOMINIUM UNIT:

Every deed, lease, deed of trust, trust deed, will or other instrument may legally describe a Condominium Unit by its identifying number, followed by the name of this Condominium, with further reference to the Plat thereof filed for record, the Declaration and related recording data. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit but also the Common Elements and

the Limited Common Elements appurtenant thereto. Each such description shall be construed to include a non-exclusive easement for ingress and egress to an Owner's Unit and use of all of the Common Elements, together with the right to the exclusive use of the Limited Common Elements.

8. SEPARATE ASSESSMENT AND TAXATION - NOTICE TO ASSESSOR:

The Developer shall give written notice to the Assessor of the County referred to in Exhibit A of the creation of condominium ownership in this property, so that each Unit and the undivided interest in the Common Elements appurtenant thereto shall be deemed a parcel and subject to separate assessment and taxation, as provided by the Act.

9. OWNERSHIP - TITLE:

A Condominium Unit may be held and owned in any real property tenancy relationship recognized under the laws of the State of Missouri.

10. NON-PARTITIONABILITY OF GENERAL COMMON ELEMENTS:

The Common Elements shall be owned in common by all of the Unit Owners and shall remain undivided, and no owner shall bring any action for partition or division of the Common Elements. Nothing contained herein shall be construed as a limitation of the right of partition of a Unit between the Owners thereof, but such partition shall not affect any other Unit.

11. USE OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS:

Each Unit Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner may use the Common Elements and Limited Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

12. USE AND OCCUPANCY:

The Units shall be used and occupied by the Unit Owner, his family and their guests, his business invitees and tenants and their guests, for Residential Purposes only. The Executive Board, Managing Agent, or Rental Agent may maintain an office in one of the Units in the Condominium, for the purpose of managing the Units within the Condominium. The Executive Board or its duly appointed Managing Agent may exercise the right to approve the number and demeanor of guests of any Unit Owner prior to said guests' occupancy of a Unit and such approval shall be continuous at the discretion of said Executive Board or its duly appointed Managing Agent. All such use

and occupancy as granted in this paragraph shall be subject to the rights reserved to Developer hereinbelow.

13. EASEMENTS FOR ENCROACHMENTS:

If the Plat, or any supplement thereto, shall be inaccurate so that any portion of the Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and the maintenance of same, so long as it stands, shall and does exist. If the Plat shall be inaccurate so that any portion of a Unit encroaches upon the general Common Elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title. Corrections shall be made by refileing an amended Plat properly reflecting the corrections in description, by the Executive Board, as soon after the discovery of the errors as is practicable.

14. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION:

Subsequent to the completion of the improvements described on the Plat, no labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Unit Owner, his agent, his contractor or subcontractor shall be the basis for filing a lien against the Unit of any other Unit Owner not expressly consenting to or requesting the same, or against the Common Elements. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners from and against all liability arising from the claim of any lien against the Unit of any other Unit Owner or against the Common Elements for construction performed or for labor, materials, services or other products incorporated in the Unit at such Unit Owner's request.

15. ADMINISTRATION AND MANAGEMENT:

The Condominium shall be governed and administered by the Executive Board of the Association. The Executive Board shall have a general responsibility to govern, manage and administer the Condominium and to exercise other powers conferred by this Declaration, the By-Laws, and the Act, all in accordance with the terms, covenants, conditions, limitations and provisions of this Declaration and the By-Laws of the Association. The administration and management functions of the Executive Board of the Association shall be subject to the rights, abilities and preferences of Developer as specified in Paragraph 33 of this Declaration. An Owner of a Condominium Unit, upon becoming an Owner, shall become a member of the Association, and shall remain a member for the period of his ownership of such Unit, regardless of whether or not such Unit is hereafter removed from the effect of the

Act, subject to the terms and provisions of this Declaration, the By-Laws, and the rules and regulations relating to the use of the Common Elements and Association Facilities. No person shall use the Common Elements and Association Facilities in any manner not in accordance with such rules and regulations. The mere acquisition or rental of any of the condominium Units in the Condominium or the mere act of occupancy of any of said Units by Unit Owners, their families, tenants, guests or invitees, will signify that this Declaration and the rules and regulations adopted pursuant thereto are accepted, ratified, and will be complied with.

16. RESERVATION FOR ACCESS, MAINTENANCE, REPAIR AND EMERGENCIES:

The Association shall have the irrevocable right, to be exercised by the Managing Agent or Executive Board, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit, at the instance of the Executive Board or Managing Agent, shall be a Common Expense of all of the Unit Owners, provided, however, that if such damage is the result of the misuse or negligence of a Unit Owner, then such Unit Owner shall be responsible and liable for all of such damage. Negligence and misuse shall be determined by the Executive Board. All damaged improvements shall be restored to substantially the same condition in which they existed prior to the damage. All maintenance, repairs and replacements to the Common Elements, whether located inside or outside of Units, shall be the Common Expense of all the Unit Owners, unless necessitated by the negligence or misuse of a Unit Owner, in which case such expense shall be charged to such Unit Owner.

17. UNIT OWNER'S MAINTENANCE RESPONSIBILITY:

(a) For purposes of maintenance, repairs, alteration and remodeling of the Condominium, a Unit Owner shall be deemed to own the interior non-supporting walls, the materials such as, but not limited to, lath, furring, wallboard, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile and flooring (but not including the subflooring), making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, including Unit doors and windows. The Unit Owner shall not be deemed to own lines, pipes, wires, conduits or systems (which for brevity are herein and hereafter referred to as utilities) running through his Unit which serve one or more other Units except as a tenant in common with the other

Unit Owners. Such utilities shall not be disturbed or relocated by a Unit Owner without the written consent and approval of the Executive Board or Managing Agent. Such right to repair, alter and remodel is connected with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials. A Unit Owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Unit Owner thereof. A Unit 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. A Unit Owner shall also keep the balcony or patio area appurtenant to his Unit in a clean and sanitary condition. All other maintenance or repairs to any Limited Common Element, except as caused or permitted by a Unit owner's negligence, misuse or neglect thereof, shall be charged to those Units to which such Limited Common Element is appurtenant.

(b) The expense for maintenance, repairs and the operation of Association Facilities shall be the Common Expense of all of the Unit Owners of this Condominium.

#### 18. COMPLIANCE WITH PROVISIONS OF DECLARATION AND BY-LAWS:

Each Owner shall comply strictly with the provisions of this Declaration, the By-Laws, and the decisions and resolutions of the Executive Board 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, and for reimbursement of all attorney's fees incurred in connection therewith, which action shall be maintainable by the Managing Agent or the Executive Board in their names or in the name of the Association on behalf of the Unit Owners or, in a proper case, by an aggrieved Unit Owner.

#### 19. AMENDMENT OF DECLARATION:

(a) This Declaration may be amended only in accordance with the procedures specified in Section 448.2-117 of the Act, the other sections of the Act referred to in said Section 448.2-117, and the express provisions of this Declaration and the By-Laws.

(b) No amendment shall be made to this Declaration during the period of time in which Developer continues to control the Association, as provided in Paragraph 33 of this Declaration, without the express written consent of Developer. No amendment to this Declaration shall diminish or impair any right of

Developer under this Declaration without the prior written consent of Developer. No amendment may modify this paragraph 19 or the rights of any Person hereunder. Except as specifically provided in this Declaration or the Act, no provision of this Declaration shall be construed to grant to any Unit Owner, or to any other Person, any priority over any rights of mortgagees.

(c) Notwithstanding any other provision of this Declaration to the contrary, if any amendment is necessary in the judgment of the Developer or the Executive Board to cure any ambiguity or to correct or supplement any provisions of the Declaration or Bylaws that are defective, missing or inconsistent with any other provisions thereof, or if such amendment is necessary to conform to the requirements of secondary mortgage market lenders, guarantors, or insurers with respect to condominium projects, then at any time and from time to time the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any liens on all or any part of the Property, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence. Each amendment of the type described in this paragraph shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by one or more Officers of the Executive Board.

#### 20. ADDITIONS, ALTERATIONS AND IMPROVEMENTS OF GENERAL AND LIMITED COMMON ELEMENTS:

There shall be no additions, alterations, improvements of or to the Common Elements or the Limited Common Elements of the Condominium by the Executive Board requiring an expenditure in excess of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per Unit in any one calendar year without prior approval of a majority of the Unit Owners of the Condominium and such expenditure(s) shall be a Common Expense. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any Common Element or Limited Common Element or Association Facilities.

#### 21. ASSESSMENT FOR COMMON EXPENSES:

(a) All Owners shall be obligated to pay the assessments, either estimated or actual, including those for the purpose of constructing, operating, maintaining and improving the Sewer System, and imposed by the Executive Board to meet the Common Expenses of the Condominium and the Association Facilities. The assessments for the Condominium shall be made according to each Owner's percentage or fractional interest in and to the Common

Elements, and payment shall be made quarterly, in advance, on the first day of January, April, July and October of each calendar year, or more frequently as may be determined by the Executive Board. The Executive Board shall prepare and deliver to each Owner in accordance with section 30 hereinbelow a statement for the estimated or actual Common Expenses.

(b) Assessments shall commence upon the conveyance of the first Unit to a Person other than Developer, and Developer shall pay all Common Expenses until that time. In the event the ownership of a Condominium Unit, title to which is derived from Developer, commences on a day other than the first day of the assessment period, the assessment for that period shall be pro-rated.

(c) The assessment made shall be based upon the cash requirements of the Association, deemed to be such aggregate sum as the Managing Agent or the Executive Board shall from time to time determine is to be paid by all of the Unit Owners of this Condominium, including Developer on all finished Units, to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations and improvements of and to the Common Elements of the Condominium and the Association Facilities, which sum may include, but shall not be limited to, expenses of management, taxes and special assessments unless separately assessed, insurance premiums, landscaping and care of grounds, common lighting and heating, repairs and renovations, trash and garbage collections, wages, common water and sewer charges, legal and accounting fees, management and rental fees, expenses and liabilities incurred by the Executive Board on behalf of the Unit Owners under or by reason of this Declaration and the By-Laws of the Association, for any deficit remaining from a previous period, the creation of a reasonable contingency, reserve, working capital and sinking funds, as well as other costs and expenses relating to the Common Elements. The omission or failure of the Executive Board to fix the assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the same. The Executive Board may require each Unit Owner to deposit and maintain, with the Executive Board, an amount not to exceed a twelve month's estimated assessment for use as working capital.

(d) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Units to which that Limited Common Element is assigned. Any Common Expense, or portion thereof, benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited. Assessments to pay a judgment against the Association shall be made only against the Units in

the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

(e) Any surplus funds of the Association remaining after provision for Common Expenses and any prepayment of reserves shall be retained by the Association, to be applied to future Common Expenses.

## 22. UNIT OWNER'S PERSONAL OBLIGATION FOR PAYMENT OF ASSESSMENTS:

The amount of the Common Expenses assessed against each Condominium Unit shall be the personal and individual debt of the Owner thereof. No Unit Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements of the Condominium or the Association Facilities, or by abandonment of his Unit. Both the Executive Board and Managing Agent shall have the responsibility to take prompt action to collect any unpaid assessment which remains unpaid more than thirty (30) days from the due date for payment thereof. In the event of default in the payment at the assessment, after notice and an opportunity to be heard, the Unit Owner shall be obligated to pay a late charge of not more than FIFTEEN AND NO/100 DOLLARS (\$15.00) per month on the amount of the assessment, and to pay interest at the rate of eighteen percent (18%) per annum in connection with assessments remaining unpaid more than thirty (30) days from due date for payment thereof, together with all expenses, including attorney's fees incurred. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable by the Executive Board, in their names or in the name of the Association, without foreclosing or waiving the lien securing same.

## 23. ASSESSMENT OF LIEN:

(a) If any Unit Owner fails or refuses to make any payment of the assessments when due, the amount thereof including any fees, charges, late charges, fines and interest, shall constitute a lien for the full amount thereof, commencing when the first installment thereof is due, on the interest of such Unit Owner in this Condominium and the Association, and upon the recording of notice thereof by the Managing Agent or Executive Board, shall be a lien upon such Unit Owner's interest in said property prior to all other liens and encumbrances, recorded or unrecorded, except liens and encumbrances recorded before the recording of this Declaration, a mortgage or deed of trust for the purchase of the Unit recorded before the date on which the assessment sought to be enforced became delinquent, and liens for real estate taxes and other governmental assessments or charges against the Unit. This paragraph shall not affect the priority of mechanic's liens or materialmen's liens or the

priority of liens for other assessments made by the Association. The lien under this section is not subject to the provisions of section 513.475, R.S.Mo.

(b) Any encumbrancer whose lien is junior to the lien of the Common Expenses herein provided may from time to time request in writing a written statement from the Managing Agent or Executive Board setting forth the unpaid Common Expenses with respect to the Unit covered by his encumbrance and unless the request is complied with within thirty (30) days, all unpaid Common Expenses which became due prior to the date at the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to such Unit and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid at the same rank as the lien of his encumbrance.

(c) The lien to secure payment of Common Expenses shall be in favor of the members of the Executive Board and their successors in office and shall be for the benefit of all other Unit Owners, and may be foreclosed by action brought by the Executive Board, in their names or in the names of the Association, in like manner as a mortgage on real estate or a power of sale under chapter 443 R.S.Mo. 1978, as amended. The members of the Executive Board and their successors in office, acting on behalf of the other Unit Owners shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

(d) In the event any person acquires or is entitled to the issuance of a Sheriff's or other official deed in foreclosure of the lien for Common Expenses above provided, the deed conveying the interest of any Unit Owner and the interest so acquired shall be subject to all of the provisions of the Act, and to the terms, provisions, covenants, conditions and limitations contained in this Declaration, the Plat, the By-Laws, or any supplement(s) or amendment(s) thereof or thereto, or any Deed affecting such interest then in force.

(e) In the event any lien exists against two (2) or more Units and the indebtedness secured by such lien is due and payable, the Unit Owner of any Unit so affected may remove the Unit and the undivided interest in the Common Elements appertaining thereto from the lien by payment at the proportional amount of the indebtedness which is attributable to such Unit. In the event the lien exists against the property, the amount of such proportional payment shall be computed on the basis of the percentages set forth in the Declaration or any amendment(s)

thereto. Upon payment as herein provided, the lienor shall execute and deliver to the Unit Owner a release of such Unit and the undivided interest in the Common Elements appertaining thereto from the lien. Any such proportional payment and release shall not prevent the lienor from proceeding to enforce his rights against any Unit or interest with respect to which the lien has not been so paid or released.

24. LIABILITY FOR COMMON EXPENSE UPON TRANSFER OF CONDOMINIUM UNIT IS JOINT:

Upon payment to the Managing Agent or to the Executive Board of a reasonable fee, not to exceed TWENTY-FIVE AND NO/100 DOLLARS (\$25.00), and upon the written request of any Owner or prospective mortgagee of a Unit, the Managing Agent, or the Executive Board, shall issue a written statement setting forth the amount of 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 any advanced payments at common assessments for prepaid items, such as insurance premiums, but not including accumulated amounts for reserves or sinking funds, if any, which statement shall be conclusive upon the Association, the Executive Board, and every Unit Owner, in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid Common Expenses which became due prior to the date of making such request shall be subordinate to the rights of the person requesting such statement. The grantee of a Condominium Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the unpaid common assessments up to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that any such prospective grantee shall be entitled to request a statement as set forth hereinabove, upon payment of the same fee. Unless a request for such statement shall be complied with within thirty (30) days after request, then such requesting grantee shall not be liable for, nor shall the Unit be conveyed subject to a lien for any unpaid assessments against the subject Unit. The provisions set forth in this paragraph shall not apply to the initial sales and conveyances of the Units made by Developer, and such sales shall be free from all Common Expenses to the date of conveyance made or to a date as agreed by Developer and Developer's grantee.

25. MORTGAGING A CONDOMINIUM UNIT - PRIORITY:

An Owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage, or other security instrument. A first deed of trust or mortgage shall be one which has

first and paramount priority under applicable law. The Owner of a Unit may create junior deeds of trust, liens or encumbrances on the following conditions: (1) that any such junior deeds of trust, liens or encumbrances shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for Common Expenses, and other obligations created by this Declaration and the By-Laws; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies maintained upon said premises by the Executive Board, and that if such release shall not be furnished forthwith by a junior mortgagee or lienholder upon written request of one or more of the members of the Executive Board or the Managing Agent, that such release may be executed by the Executive Board, as trustee for such junior mortgagee or lienholder.

## 26. INSURANCE:

(a) Commencing not later than the time of the first conveyance of a Unit to a Person other than Developer, the Association shall purchase and maintain property insurance on the Common Elements, insuring against all risks of direct physical loss, issued by responsible insurance companies authorized to do business in the State of Missouri. The total amount of such insurance after application of any deductibles shall be not less than Eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Commencing not later than the time of the first conveyance of a Unit to a Person other than Developer, the Association shall purchase and maintain liability insurance, in an amount determined by the Executive Board, but in no event less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), covering all occurrences commonly insured against by similar condominiums, for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

(c) The Association may carry such other insurance as deemed appropriate by the Executive Board to protect the Association or the Unit Owners.

(d) Each Unit Owner may obtain additional insurance at his own expense for his own benefit, provided that all such policies shall contain waivers of subrogation and provided, further, that the liability of the carriers issuing insurance to the

Association shall not be affected or diminished by reason of any such insurance carried by any Unit owner. Insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and casualty and public liability insurance coverage pertaining to losses within each individual Unit shall be the responsibility of the Unit Owner thereof.

(e) Insurance policies carried pursuant to subparagraphs (a) and (b) hereinabove shall provide that each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association; that the insurer waives its rights to subrogation under the policy against any Unit Owner or members of his household; that no act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and that if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(f) Any loss covered by the insurance described in subparagraph (a) hereinabove shall be adjusted with the Association, and insurance proceeds for that loss shall be payable to the Association as trustee for Unit Owners and lienholders as their interests may appear, and not to any mortgagee or beneficiary under any deed of trust. Subject to the provisions of subparagraphs (h) and (i) hereinbelow, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

(g) An insurer that has issued an insurance policy under this paragraph shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. No insurer issuing the policy may cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(h) Any portion of the Condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless the Condominium is terminated, or repair or replacement would be

illegal under any state or local health or safety statute or ordinance, or eighty percent (80%) of the Unit Owners, which 80% must include the unanimous agreement of each Owner of a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Condominium is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, and the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and to the Owners of the Units to which those Limited Common Elements were allocated, and the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all Units. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under subsection 1 of Section 448.1-107 of the Act, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

(i) Notwithstanding any of the provisions contained in subparagraph (h) hereinabove, the distribution of insurance proceeds shall be governed by Section 448.2-118 of the Act if the Condominium is terminated.

#### 27. EMINENT DOMAIN:

Whenever all or part of the Common Elements shall be taken, injured or destroyed by eminent domain, the Association shall represent the Unit Owners in negotiations, settlements and agreements with the condemning authority. Each Unit Owner hereby appoints the Association as attorney-in-fact for this purpose. Each Unit Owner shall be entitled to notice thereof, but in any proceedings for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. The award or proceeds of settlement shall be payable to the Association for the use and benefit of the Unit Owners and their mortgagees as their interests may appear.

#### 28. TERMINATION OF THE CONDOMINIUM:

(a) This Condominium may be terminated by the execution of a termination agreement, acknowledged as required by the law of the State of Missouri governing execution and acknowledgment of deeds for the transfer of real estate, by Owners of Units to which at least eighty percent (80%) of the votes in the

Association are allocated. The termination agreement shall specify the date by which it shall be recorded in the Office of the Recorder of Deeds in the County in which the Condominium is located. If not thus recorded, the termination agreement will be void.

(b) The termination agreement may provide that all of the Common Elements and Units shall be sold following termination and, if so, the minimum terms of the sale. The Association, on behalf of the Unit Owners, may contract for the sale of the real estate, but the contract is not binding on the Unit Owners until approved as set forth in subparagraph (a) hereinabove.

(c) Upon termination of the Condominium, title to the real estate to be sold shall vest in the Association as trustee for the holders of all interests in the Units and the Association thereafter shall have all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association shall continue in existence, with all powers it had before termination.

(d) Unless otherwise provided in the termination agreement, as long as the Association holds title to the real estate, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate which formerly constituted his Unit. During the period of such right to occupancy, each Unit Owner and his successors in interest shall remain liable for all assessments and other obligations imposed on Unit Owners by this Declaration, the By-Laws, and the Act.

(e) Following termination, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for the Unit Owners and holders of liens on the Units as their interests may appear. Following termination, creditors of the Association holding liens on the Units, if recorded prior to termination, may enforce the liens in the same manner as any lienholder. All other creditors of the Association shall be treated as though they had perfected liens on the Unit immediately prior to termination.

(f) Proceeds of the sale of the real estate following termination shall be distributed to Unit Owners and lienholders as their interests may appear, in proportion to the respective interests of Unit Owners. If any Unit or Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the respective interests of Unit Owners shall be their respective

Common Element interests immediately prior to termination. Otherwise, the respective interests of Unit Owners shall be the fair market values of their Units, Limited Common Elements, and Common Element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit owners and shall become conclusive and binding on the Association and the Unit Owners, unless disapproved, within thirty (30) days after distribution by Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners shall be determined by dividing the fair market value of that owner's Unit and Common Element interest by the total fair market values of all the Units and Common Elements.

(g) Except as provided in subparagraph (h) hereinbelow, foreclosure or enforcement of a lien or encumbrance against the entire Condominium shall not of itself terminate the Condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the Condominium shall not withdraw that portion from the Condominium, whether or not that portion is subject to withdrawal from the Condominium by Developer.

(h) If a lien or encumbrance against a portion of the real estate comprising the Condominium has priority over the Declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the Condominium.

#### 29. PERSONAL PROPERTY FOR COMMON USE:

The Executive Board, in the name of the Association as trustee for all of the Owners, may acquire and hold for the use and benefit of all of the Unit Owners, real, tangible and intangible personal property (Association Facilities), and may dispose of the same by lease, sale or otherwise. The beneficial interest of the Owners in any such property shall be a percentage equal to the percentage interest of each such Unit Owner in and to the Common Elements, and such interest therein shall not be transferable except with the conveyance of a Unit. A conveyance of a Unit shall transfer to the grantee ownership of the grantor's beneficial interest in such property without any reference thereto in the deed. Each Unit Owner may use such property in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the other Unit Owners. The transfer of title to a Unit under

foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Unit.

30. REGISTRATION OF MAILING ADDRESS:

Each Unit owner shall register his mailing address with the Executive Board, and notices or demands intended to be served upon a Unit Owner shall be sent by mail, postage prepaid, addressed in the name of the Unit Owner at such registered mailing address. At the discretion of the Unit Owner, the Unit Owner may authorize the Executive Board and the Managing agent or both to send routine statements of account and notices specified by the Unit Owner by electronic means to the electronic address provided by the Unit Owner.

31. PERIOD OF CONDOMINIUM OWNERSHIP:

The separate Condominium estates created by this Declaration, or any supplements thereto, and the Plat, or any supplements thereto, shall continue until this Declaration is revoked by Developer prior to the first conveyance of a Unit to a Person other than Developer, or until terminated in the manner and as provided hereinabove and in Section 448.1-118 of the Act.

32. RESERVATION OF DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS:

(a) Developer reserves the right to construct additional Buildings and create Units, Limited Common Elements, and Common Elements within the Condominium. Developer may create a maximum of 68 Units on the real estate described in Exhibit A, and if thus created, all such additional Units will be completed within ten (10) years of the date of recording of this Declaration. Upon the creation of such additional Units, Developer will be the Owner of any Units thus created, and the Allocated Interests shall be reallocated among all Units, both previously existing and newly created, by allocating to each Unit that percentage of interest in the Allocated Interests arrived at by dividing the total area (in square feet) of living space contained in that Unit by the combined total area (in square feet) of living space in all the Units, previously existing and newly created. Ownership of each Unit, both previously existing and newly created, shall entitle the Owner to the number of votes in the Association obtained by multiplying the percentage interest in the Common Elements for such Unit by 1,000. If the exercise of this Developer right any Common Elements or Limited Common Elements, the Amendment shall describe same and shall designate the Unit to which each Limited Common Element is allocated.

(b) Developer reserves the right to withdraw from the Condominium, at any time through the calendar year 1998, those

portions of the real estate described in Exhibit A which are more particularly described as follows:

All portions of The Breakers, a Condominium, except that portion indicated as area 400 on the plat of "The Breakers, a Condominium", on file and of record in the Camden County Recorder's Office, said delineation of portions being shown on said plat solely for the purpose of exercising Developer's rights reserved under the Condominium Declaration for The Breakers, a Condominium, and not for the purpose of resubdividing said real property.

None of the aforescribed portions may be withdrawn from the Condominium after a Unit located within such portion has been conveyed to a purchaser other than Developer.

(c) Developer reserves the right to subdivide Units or to convert Units into additional Units or into Common Elements at any time prior to the conveyance of any such Unit to a purchaser other than Developer. Upon any exercise of this right, Developer shall prepare, execute and record an amendment to this Declaration. If by exercise of the right reserved in this subparagraph a Unit is converted entirely to Common Elements, the amendment shall reallocate the Allocated Interests of the converted Unit among the other Units in accordance with the provisions of Section 448.1-107 of the Act. If by exercise of the right reserved in this subparagraph a Unit is subdivided into two or more Units, whether or not part of the subdivided Unit is converted into Common Elements, the amendment shall reallocate the Allocated Interests of the subdivided Unit among the Units created by dividing the total area (in square feet) of living space contained in each newly created Unit by the total area (in square feet) of the subdivided Unit.

(d) Upon the exercise of any of the development rights reserved under subparagraphs (a), (b), or (c) hereinabove, Developer will prepare, execute and cause to be recorded in the Office of the Recorder of Deeds for the County in which the Condominium is located, an amendment to this Declaration, including Plats or Plans, as required by the Act, and will otherwise comply with the requirements set forth in Section 448.2-110 of the Act.

(e) In the event that Developer exercises any of the development rights reserved in subparagraphs (a), (b), or (c) hereinabove, no assurance is made as to which shall be exercised first, or in what order. Developer may, but need not, exercise such rights as to all or only portions of such real estate, and a single exercise of any such right shall not constitute a waiver of the right to subsequently exercise that right or any other right

reserved to Developer, either with respect to the same or a different portion of the property.

(f) Developer reserves in, on, under, through and above the real estate described on Exhibit A such easements as are reasonable or necessary in order for Developer to exercise the rights reserved hereinabove in creating additional Units, and to complete improvements and Units included in this Declaration, or in the real estate which may be subsequently added to the Condominium as hereinabove described in this paragraph. This reservation of easement is in addition to that granted by Section 448.2-116 of the Act.

(g) Developer reserves to itself, its successors and assigns, an easement or license to give or to grant to others, or to locate, erect, construct, maintain and use, or to authorize the location, erection, construction, or maintenance and use of the easements, rights-of-way or conduits for all and any purposes, including water, gas, septic tanks, storm and sanitary sewer mains, electric lines, telephone lines, poles and wires, and other utilities, or all or any of them, over, under, across, upon and within any part of the real property described on Exhibit A hereto or any real estate added to the Condominium in the future.

(h) Developer reserves the right to make the Condominium part of a larger Condominium or a planned community or to make the Condominium subject to a Master Association.

(i) Developer shall be liable for all expenses in connection with the real estate subject to the development rights as set forth in paragraphs (a), (b) or (c) hereinabove and no other Unit Owner or portion of the Condominium shall be subject to a claim for payment of such expenses. Any income or proceeds from real estate subject to the development rights reserved in subparagraphs (a), (b) and (c) hereinabove shall inure to Developer.

(j) Developer shall have the right and easement to maintain sales offices, construction offices, management offices and models throughout the Property and to maintain one or more advertising signs on the Common Elements for so long as the Developer shall continue to sell Units in the Condominium in the normal course of business. Developer reserves the right to place models, management offices and sales offices in any Units owned by Developer and on any portion of the Common Elements in such number, of such size and in such locations as Developer deems appropriate. The models, management offices and sales

offices constituting a portion of the Common Elements shall be subject to the following requirements:

1. The number of models maintained by the Developer within the Common Elements shall not exceed four (4). The size of each such model shall not exceed the size of the comparable Unit available for purchase.

2. In addition to the models maintained by the Developer on the Common Elements, Developer shall have the right to maintain within the Common Elements not more than three (3) offices for sales and management purposes. Each such sales or management office may not exceed the size of the largest Unit in the Condominium.

3. Developer may from time to time relocate models, management offices and sales offices to different locations within the Property. Upon the relocation of a model, management office or sales office constituting a Common Element, Developer may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed Common Elements, and any personal property not so removed shall be deemed the property of the Association.

4. So long as Developer shall be selling Units in the Condominium, Developer shall have the right to restrict the use of the Common Element parking spaces, reserving spaces for use by prospective Unit purchasers, Developer's employees and others engaged in sales, maintenance, construction or management activities.

### 33. VOTING RIGHTS - DEVELOPER CONTROL:

(a) A Person having an ownership interest in a Unit in this Condominium shall be entitled to cast the number of votes allocated to that ownership interest as set forth in paragraph 3 above at the annual meeting or any special meeting of the Executive Board or the Association. The Unit Owners of a Unit owned jointly, by two or more persons, shall agree among themselves as to which owner shall cast the votes allocated to that Unit so owned at the annual meeting or any special meeting of the Executive Board or the Association. The aggregate of all the votes assigned to all Units, now or hereafter constructed and included within the Condominium, shall equal 1,000, which shall be considered one hundred percent (100%) for voting purposes.

(b) Developer reserves to itself or its designee the right to appoint or to remove the Officers and members of the Executive

Board. Notwithstanding this reservation, however, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than Developer, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Developer. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than Developer, not less than thirty-three and one-third percent (33-1/3%) of the members of the Executive Board shall be elected by Unit Owners other than Developer.

(c) The reservations of Developer set forth in subparagraph (b) hereinabove shall terminate upon the earliest to occur of the following:

(1) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than Developer; or,

(2) Two (2) years after Developer or its successor in interest has ceased to offer Units for sale in the ordinary course of business; or,

(3) Two (2) years after any Development right to add new units has been exercised; or,

(4) Developer's voluntary surrender of such reservations. In such event, Developer may require, in an instrument duly recorded in the office of the Recorder of Deeds for the county in which the Condominium is located, that such actions by the Association or the Executive Board as are specified in such instrument must be approved by Developer before becoming effective. Developer's right to require such approval shall terminate upon the earliest to occur of events (1), (2), or (3) hereinabove.

#### 34. POWERS OF ASSOCIATION:

(a) The Association, through the Executive Board or the Managing Agent, shall have the following powers, duties, rights and privileges, the act or the exercise of which shall be paid for as a Common Expense of this Condominium:

(1) To estimate the cost of the expenses of administration, maintenance and repair of the Common Elements and of all exterior portions of the improvements and Property; and after determining the amount required annually for such purposes, to determine the manner in which said amount

shall be paid to the general maintenance fund to be held, managed and administered by the Executive Board.

(2) To provide, maintain, distribute and install, water, water storage, waste removal and treatment, and electricity, and other necessary utility services for the Condominium, Units, Common Elements and Association Facilities.

(3) To obtain public liability and fire and extended coverage insurance for the Property as set forth in this Declaration, and to purchase policies of workmen's compensation insurance to the extent necessary to comply with Missouri Law.

(4) To furnish, upon ten (10) days' notice to the Executive Board or the Managing Agent, and upon payment of a reasonable fee therefor, a statement of the Unit Owner's account setting forth the amount of any unpaid assessments, whether general or special, or other charges; to keep detailed, accurate records, in chronological order, of the receipts and expenditures affecting the Common Elements and Association Facilities, specifying and itemizing the maintenance and repair expenses of the Common Elements and Association Facilities, and any other expenses incurred, whether general or special, and to make such records available for examination by the Unit Owners at all reasonable times.

(5) From time to time, as the Executive Board may determine, to select a Managing Agent for the purpose of managing said property, caring for all Common Elements and Association Facilities, and collecting payments from the Unit Owners, and to agree upon the compensation, if any, to be paid to such Managing Agent, the amount thereof to be added to and be a part of the Common Expenses and paid out of the general maintenance fund. Without limiting the choice of selection of the Managing Agent, the Executive Board may, in its discretion, select as Managing Agent the Developer or its heirs, successors, assigns or personal representatives or any of its or their affiliates.

(6) To designate, hire, employ and remove personnel necessary for the maintenance, repair and replacement of the Common Elements and Association Facilities.

(7) From time to time, as the Executive Board may determine, to select a Rental Agent, for the purpose of providing a rental agency for those Unit Owners who desire

to use the services of the Rental Agent in renting their Units. The compensation, if any, to be paid to such Rental Agent shall be agreed upon between the Rental Agent and those Unit Owners who use such rental agency, and shall in no event become the responsibility of the Association or of any Unit Owner or Owners other than those using said services.

(8) To retain and from time to time to contract for the services of attorneys and accountants,

(9) To the extent not otherwise provided by the Developer, to provide for landscaping, maintenance, decorating, repairing, replacement of Common Elements and Association Facilities, and such furnishings and equipment for the Common Elements and the Association Facilities as the Executive Board shall determine are necessary and proper, and the Executive Board shall have the exclusive right and duty to acquire any such furnishings and equipment for the Common Elements and the Association Facilities.

(10) To purchase, or otherwise acquire or provide for, the furnishing of any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Executive Board is required to secure or pay for pursuant to the terms of this Declaration, the By-Laws, supplements or amendments thereto, or which, in the Executive Board's opinion, shall be necessary or proper for the maintenance and operation of the property as a first class Condominium or for the enforcement of the provisions of this Declaration and the By-Laws. Any such item carried on and supplied by the Executive Board under this paragraph which benefits fewer than all the Units in the Condominium shall be charged on a uniform basis to each particular Unit thus benefitted to be treated in such cases as a special assessment against each such Unit.

(11) To discharge any mechanic's lien or encumbrance levied against the Condominium or any part thereof which may in the opinion of the Executive Board constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of a particular Unit Owners or Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and for any costs incurred by the Executive Board by reason of said lien or liens. Said total costs shall be

specifically assessed against said Unit Owner(s) and their respective Unit(s).

(12) To maintain and repair any Unit if such maintenance or repair is necessary as determined by the Executive Board, in order to protect the Common Elements or any other portion of a Building, if the Unit owner of such Unit has failed or refuses to perform said maintenance or repair within a reasonable time, under the circumstances, after written notice of the necessity of such maintenance or repair has been either personally delivered by any member of the Executive Board or their agents, servants, representatives or employees, or deposited in the mail by the Executive Board or their agents, servants, representatives or employees, to the address given by such Unit Owner as the address which such Unit Owner has theretofore designated as his mailing address; and the Executive Board shall levy a special assessment against such Unit Owner for the cost of said maintenance or repair done or caused to be done.

(13) To authorize the entry into any Unit or any Limited Common Element(s) when necessary in connection with any maintenance or construction for which the Executive Board is responsible. Such entry into the Unit itself or the Limited Common Elements appurtenant to the Unit shall be made with as little inconvenience to the Unit Owner as practicable, and any damage caused thereby shall be repaired by the Executive Board at the expense of the general maintenance fund.

(14) To establish such restrictions and requirements respecting the use and maintenance of the Units and the use of the Common Elements and Association Facilities as are reasonable and necessary to prevent unreasonable interference with use of the respective Units, the Common Elements and Association Facilities, by the several Unit Owners; and to establish administrative rules and regulations governing the operation and use of same. A copy of such rules and regulations shall be delivered, mailed or emailed to each Unit Owner upon the adoption thereof.

(15) To establish, grant and dedicate easements for Public, quasi-public and private utilities in addition to any shown on the Plat, in, over and through any of the Common Elements (excepting therefrom any balcony, porch, patio, stairway), and to construct and maintain any utility service where the same is not otherwise utility service

carried on and supplied by the Executive Board under the terms hereof may, in the Executive Board's discretion, be charged (on a uniform basis) to each particular Unit consuming the same, to be treated in such case as a special assessment against such Unit, otherwise such service to be paid for out of the general maintenance fund.

(16) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in this Declaration, the By-Laws and any supplements and amendments thereto.

(17) To prepare a budget, at least annually, in order to determine the amount of the common assessments payable by the Unit Owners to meet the Common Expenses, and to allocate and assess such common charges among the Unit Owners according to their Allocated Interests, and by majority vote of the Executive Board to adjust, decrease or increase the amount of the annual or monthly assessments.

(18) To levy and collect special assessments whenever in the opinion of the Executive Board it is necessary to do so in order to meet increased operation or maintenance expenses or costs, or additional capital expenses, or because of emergencies,

(19) To collect all assessments and direct charges due from Unit owners by suit or otherwise, and to enjoin or seek damages from a Unit Owner as provided in this Declaration or in the By-Laws, and any amendment or supplement thereto; To to enforce a late charge, after notice and opportunity for a hearing of not more than FIFTEEN AND NO/100 DOLLARS (\$15.00) per month and to collect interest at the rate of eighteen percent (18%) per annum in connection with assessments remaining unpaid more than thirty (30) days from due date for payment thereof, together with all expenses, including attorney's fees incurred, all as set forth in paragraph 22 above; and from funds collected from Unit Owners cause to be disbursed regularly and punctually all amounts due for salaries or other compensation due and payable to employees, insurance premiums, and sums otherwise due and payable as operating expenses.

(20) To protect and defend, in the name of the Association, any part or all of this Condominium from loss and damage by suit or otherwise.

(21) To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority and by the

provisions of this Declaration and the By-Laws, and to execute all such instruments evidencing such indebtedness as the Executive Board may deem necessary and give security therefor. Such indebtedness shall be the several obligation of all of the Unit Owners in the same proportion as their Allocated Interests; provided, however, that nothing contained herein shall allow the said Executive Board to borrow funds in an amount in excess of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) without the prior approval of a majority of the Unit Owners; provided further, that no Common Element or portion thereof shall be subjected to a security interest without the approval of eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Developer; and no Limited Common Element shall be subjected to a security interest without the approval of all the Unit owners to which that Limited Common Element is allocated.

(22) To enter into contracts to carry out their duties and powers; working in conjunction with an accountant, to prepare for execution and filing by the Executive Board in the name of the Association, all forms, reports, and returns required by law in connection with unemployment insurance, workmen's compensation insurance, disability benefits, social security and other taxes now in effect or hereafter imposed, and any requirements relating to the employment of personnel.

(23) To establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed advisable by the Executive Board or the Managing Agent.

(24) To meet at least bimonthly.

(25) To maintain businesslike relations with all Unit Owners, whose service requests shall be received, considered and recorded in a systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after thorough investigation, be reported to the Unit Owner, to the Executive Board, and to the Association, with appropriate recommendations. As a part of a continuing program, the Executive Board shall secure full performance by a Unit Owner of all items and maintenance for which he is responsible.

(26) To approve all payment vouchers for Common Expenses, which must be submitted to the Executive Board for written

approval prior to payment. A permanent record of all such vouchers shall be kept by the Executive Board.

(27) To invest and re-invest any funds in its possession in such stocks, bonds, notes and other security or property, real or personal, including shares or interests in investment trusts and common trust funds, as the Executive Board may deem advisable.

(28) To adopt and amend By-Laws and rules and regulations.

(29) To furnish, within ten (10) days of written request by a Unit Owner, a certificate containing the information set forth in Section 448.4-109 of the Act concerning resale of a Unit, and to impose a reasonable fee therefor.

(30) To exercise all other powers conferred by this Declaration or the Act.

(31) To exercise all other powers that may be exercised in the State of Missouri by legal entities of the same type of the Association.

(32) To exercise any other powers necessary and proper for the governance and operation of the Association.

(b) The Managing Agent shall perform such duties and services as the Executive Board shall authorize, including but not limited to all of the duties listed in the Act, this Declaration, and the Bylaws, other than the following:

(1) To adopt the annual budget, any amendment thereto, or to assess any Common Expenses;

(2) To adopt, repeal or amend rules and regulations;

(3) To designate signatures on Association bank accounts;

(4) To borrow money on behalf of the Association;

(5) To acquire and mortgage Units;

(6) To allocate Limited Common Elements;

(7) To convey Units, Limited Common Elements, or Common Elements, or to execute documents for such purpose.

(c) Everything done by the Managing Agent under the provisions of this Declaration or the By-Laws shall be done as Managing

Agent of the Executive Board or the Association, and as Managing Agent of the Unit Owner, and all obligations and expenses incurred thereunder shall be for the account, on behalf, and at the expense, of the Executive Board, the Association, and the Unit Owner.

(d) The Managing Agent shall establish and maintain a separate bank account for the Association, with authority to draw thereon for any payments to be made by Managing Agent to discharge any liabilities or obligations incurred by Managing Agent pursuant to this Declaration and the By-Laws, including the payment of compensation to Managing Agent and his employees. Managing Agent shall not commingle funds from said account with funds in his possession from any other source.

35. GENERAL RESERVATIONS:

(a) The property shall be subject to a perpetual easement to the Executive Board and to the Managing Agent, and to their respective successors and assigns, for ingress and egress, to perform their obligations and duties as required by this Declaration and the By-Laws, or any amendment or supplement thereto.

(b) No riparian rights in the Lake of the Ozarks shall be deemed to be conveyed to any Unit Owner with the Deed to any Unit in this Condominium. Any riparian rights shall ultimately belong to the Association.

(c) The following easements or licenses appurtenant to or included in the Condominium are of record:

Easements in favor of Union Electric Company of Missouri and Union Electric Light & Power Company according to instruments filed of record at Book 49, Page 505; Book 63, Page 162; Book 119, Page 597; Book 49, Page 554; Book 75, Page 617 and 633; Book 55, Page 612, Book 54, Page 235, and Book 127, Page 133, Camden County Recorder's Office.

Rights-of-way in favor of Camden County, Missouri, according to instruments filed of record at Book 121, Page 617; Book 127, Page 320; Book 127, Page 325; and Book 125, Page 571, Camden County Recorder's Office.

Restrictions, reservations, conditions and easements according to the plat of "Horseshoe Bend No. 8" filed of record at Plat Book 7, Page 25; and according to instruments filed of record at Book 119, Page 329; and Book 212, Page 93, Camden County Recorder's Office.

36. SEWER SYSTEM:

(a) Rights, powers and duties of the Association. The Association shall have the following rights, powers and duties in regard to the Sewer System:

(1) The Association shall construct, maintain, operate, repair, improve, and regulate the use of the Sewer System. In connection with such construction, maintenance, operation, repair, improvement and regulation of the sewer system, the Association shall comply with all requirements and duties imposed by the Missouri Clean Water Law, Chapter 204, RSMo, and all standards, rules and regulations adopted pursuant thereto and permits and orders issued thereunder, and all other provisions of law, federal, state and local, as such may exist from time to time.

(2) The Association shall provide to all Owners in the Property the right and advantage of connection with such Sewer System for the collection, treatment and disposal of sewage and wastewater, subject, however, to the conditions hereinafter provided, and subject to such reasonable rules and regulations as may be prescribed by the Association, such rules and regulations to be uniform in application to all Owners.

(3) The Association may acquire for addition to the Sewer System any sewage treatment facilities, properties, and improvements of the type described in this Declaration which are located outside the property described in Exhibit A, and may permit any property and improvements located outside the Property to be connected to the Sewer System, provided that all such assets which are acquired for addition to the Sewer System and all such property and improvements which are permitted to be connected to the Sewer System shall be made subject to all the terms, conditions and restrictions of this Declaration and the rules and regulations of the Association promulgated pursuant thereto.

(4) The Association is empowered to transfer and convey to any public authority, municipal corporation, or private corporation certificated by the Public Service Commission of Missouri, said Sewer System, either with or without money consideration therefor, and such conveyance shall become mandatory and shall be made by the Association as soon as practicable, subject to the approval of the Commission, when any such public authority, municipal

corporation, or private corporation certificated by the Public Service Commission becomes capable of accepting such conveyance and thereafter performing all functions relating to the construction, maintenance, operation repair, improvement and regulation of the Sewer System.

(5) The Association is empowered to contract with any other Person, firm, or governmental or other entity for the performance of all or any part of the sewage treatment services, or construction, repair and improvement of the Sewer System, provided that the cost of any such contract shall be paid by the Association in the same manner as all other costs and expenses incurred by the Association in operating and maintaining the Sewer System.

(6) The Executive Board shall adopt, prescribe and enforce reasonable rules and regulations with respect to the use of the Sewer System. Said rules and regulations shall not conflict with the Missouri Clean Water Law and regulations promulgated pursuant thereto.

(7) The Executive Board shall be authorized from time to time to employ such agents, servants and employees as they may determine necessary, and may employ counsel to prosecute or defend suits or actions for or against them concerning the Sewer System and the operation thereof.

(8) The Executive Board shall be authorized to contract for and obtain such policies of insurance and surety bonds as it may deem necessary or appropriate concerning construction, maintenance, operation, repair and improvement of the Sewer System.

(9) The Executive Board, its successors and assigns, shall be authorized to establish a perpetual easement in gross for ingress and egress, to perform its obligations and duties as required herein. Should it be necessary to enter a unit to repair a common element or sewer facility, agents and workmen shall be entitled to entrance by exhibiting to the Unit owner an order from the Executive Board.

(b) CONNECTION TO THE SEWER SYSTEM. All Units shall be connected to the Sewer System, and no Unit may be occupied unless so connected to the Sewer System. No septic tank, cesspool, outhouse or other means of disposal of sewage on an individual unit may be used in the Condominium.

(c) DUTY TO MAINTAIN, REPAIR AND IMPROVE. If the Sewer System shall at any time require maintenance, repair, improvement, or

replacement, it shall be the duty of the Association to cause the same to be done, and the Association shall have the power to contract for the same and to determine the terms of the contract. The Association shall pay for the costs thereof from the annual and special assessments made hereunder. The Association shall also be empowered to borrow money and to pledge the assets of the Association as security therefor, in order to make payment for such costs, subject to the restrictions on borrowing set forth in paragraph 34 of this Declaration and in the By-Laws.

37. GENERAL:

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

(b) In the event of total destruction of any Condominium Building, no Building may be constructed or erected on said parcel without prior written approval from the Executive Board of the plans and specifications for the proposed Building to be constructed.

(c) The provisions of this Declaration shall be in addition and supplemental to the Uniform Condominium Act of the State of Missouri, and to all other provisions of law.

(d) The headings and captions contained in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Declaration or of any provision herein contained.

(e) Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, DECLARANT has duly executed this Declaration this 11<sup>th</sup> day of May 1984.

DECLARANT:  
(SEAL) DENWAY INVESTMENT COMPANY

BY

DENNIS L. FOURNIE, President

R. WAYNE THOMAS, Secretary

THIS DOCUMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED.

STATE OF MISSOURI  
COUNTY OF CAMDEN

On this 11<sup>th</sup> day of May 1984, before me appeared Dennis L. Fournie to me personally known, who being by me duly sworn, did say that he is the President of Denway Investment Company, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Dennis L. Fournie acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Osage Beach, Missouri, the day and year last above written.

Faye M. Coultas

NOTARY PUBLIC  
My commission expires: June 7, 1986

## Contents

1. DEFINITIONS:	1
2. SUBMISSION OF PROPERTY TO THE ACT:	5
3. DIVISION OF PROPERTY INTO UNITS AND ALLOCATION OF INTERESTS:	6
4. PLAT AND PLANS:	6
5. LIMITED COMMON ELEMENTS:	7
6. INSEPARABILITY OF A CONDOMINIUM UNIT:	7
7. DESCRIPTION OF CONDOMINIUM UNIT:	7
8. SEPARATE ASSESSMENT AND TAXATION - NOTICE TO ASSESSOR:	8
9. OWNERSHIP - TITLE:	8
10. NON-PARTITIONABILITY OF GENERAL COMMON ELEMENTS:	8
11. USE OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS:	8
12. USE AND OCCUPANCY:	8
13. EASEMENTS FOR ENCROACHMENTS:	9
14. TERMINATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION:	9
15. ADMINISTRATION AND MANAGEMENT:	9
16. RESERVATION FOR ACCESS, MAINTENANCE, REPAIR AND EMERGENCIES:	10
17. UNIT OWNER'S MAINTENANCE RESPONSIBILITY:	10
18. COMPLIANCE WITH PROVISIONS OF DECLARATION AND BY-LAWS:	11
19. AMENDMENT OF DECLARATION:	11
20. ADDITIONS, ALTERATIONS AND IMPROVEMENTS OF GENERAL AND LIMITED COMMON ELEMENTS:	12
21. ASSESSMENT FOR COMMON EXPENSES:	12
22. UNIT OWNER'S PERSONAL OBLIGATION FOR PAYMENT OF ASSESSMENTS:	14
23. ASSESSMENT OF LIEN:	14
24. LIABILITY FOR COMMON EXPENSE UPON TRANSFER OF CONDOMINIUM UNIT IS JOINT:	16
25. MORTGAGING A CONDOMINIUM UNIT - PRIORITY:	16
26. INSURANCE:	17
27. EMINENT DOMAIN:	19
28. TERMINATION OF THE CONDOMINIUM:	19
29. PERSONAL PROPERTY FOR COMMON USE:	21
30. REGISTRATION OF MAILING ADDRESS:	22
31. PERIOD OF CONDOMINIUM OWNERSHIP:	22
32. RESERVATION OF DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS:	22
33. VOTING RIGHTS - DEVELOPER CONTROL:	25
34. POWERS OF ASSOCIATION:	26
35. GENERAL RESERVATIONS:	33
36. SEWER SYSTEM:	34
37. GENERAL:	36