

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE OAKPOINT II TOWNHOUSE
HOLIDAY ISLAND, ARKANSAS

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REVISED AND APPROVED MAY 1, 2002
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OAKPOINT II TOWNHOUSES, HOLIDAY ISLAND, ARKANSAS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the “Declaration”), executed as of this 17th day of March, 1982 by MCO Properties Inc., a Delaware corporation (hereinafter referred to as the “Developer”), is made with reference to the following:

A. Developer is the owner of certain real property located in Carroll County, Arkansas (hereinafter referred to as the “Property”) improved with fifty (50) townhouse structures (hereinafter referred to as the “Living Units”), along with certain Limited Common Property which is hereinafter defined in Article I (the Property, Living Units, Limited Common Property and all of the appurtenances and facilities thereof are hereinafter collectively referred to as the “Project”), all of which is hereinafter more particularly described in this Declaration.

B. Developer intends to sell and convey interests in the Project to various persons, firms, corporations and other associations, subject to certain protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes (hereinafter collectively referred to as “Covenants and Restrictions”) between Developer and the Owners (as hereinafter defined in Article I), all of which Covenants and Restrictions are set forth in this Declaration and are hereby declared, expressed, agreed and intended (i) to be in furtherance of a plan for the sale and use of the Project, and (ii) to benefit the Project and the Owners, and their successors and assigns.

C. Developer deems it desirable for the efficient preservation of the values and interests in the Project to create an association to which should be delegated and assigned powers of (i) maintaining and administering the Limited Common Property and portions of the Lots and Living Units, (ii) administering and enforcing the Covenants and Restrictions contained in this Declaration, and (iii) collecting and disbursing the assessments and charges hereinafter created, and for this purpose has incorporated under the laws of the State of Arkansas, as a non-profit corporation, the Oakpoint II Townhouse Association, (hereinafter referred to as the “Association”), for the purpose of exercising the functions described herein.

NOW, THEREFORE, the Association hereby declares that the Property, Living Units, Limited Common Property, appurtenances and facilities described herein shall be held,

conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only upon and subject to the following uniform Covenants and Restrictions, all of which are hereby declared, established, expressed and agreed (i) to be for the benefit and protection of the Project, its desirability, value and attractiveness, (ii) to be for the benefit of the Owners in the Project, (iii) to run with the land and be binding upon all parties having or acquiring any right, title, or interest in the Project or any portion thereof, (iv) to inure to the benefit of every portion of the Project and any interest therein, and (v) to inure to the benefit of and be binding upon each successor and assignee in interest of each Owner. Any conveyance, transfer, sale, assignment, lease or sublease made by Developer or by the Association of a Living Unit or any portion of the Project will and hereby is deemed to incorporate by reference the provisions of this Declaration, including, but not limited to, the Covenants and Restrictions contained herein.

ARTICLE I
DEFINITIONS

In addition to the definitions hereinabove set forth, the following words or phrases when used in this Declaration (except when the context otherwise requires) shall have the following definitions:

Section 1. "Assessment: shall mean and refer to an assessment, whether annual or special, which is levied, charged or assessed against an Owner and his or her Lot in accordance with the provisions of this Declaration, and shall become a debt of such Owner and a lien against his or her Lot as hereinafter provided.

Section 2. "Association" shall mean and refer to the Oakpoint II Townhouse Association, a non-profit Arkansas corporation, or its successors or assigns, which entity shall consist of all the Owners of Lots in the Project, and which shall have the duty of maintaining, repairing, operating, managing, and administering the Project in the manner and to the extent provided herein.

Section 3. "By-Laws" shall mean and refer to the duly adopted By-laws of the Association as the same may from time to time be amended.

Section 4. "Limited Common Property" shall mean and refer to the entire Project except for the Living Units and the Lots on which such Living Units are located, as shown on the recorded subdivision plat of the Project. The Limited Common Property is intended to be devoted to the common use and enjoyment of the Owners within the Project.

Section 5. "Lot" shall mean and refer to any parcel of the Property located beneath and around a Living Unit as Shown upon the recorded subdivision plat of the Project. Those five (5) foot portions of Lots as shown on the recorded subdivision plat which lie outside of the exterior parameters of the Living Units shall, for all purposes other than payment of real property taxes and assessments, be treated in the same manner as the Limited Common Property.

Section 6. "Living Unit" shall mean and refer to any individual townhouse situated upon a Lot. The Living Units are clustered in groups of two (2) or four (4) Living Units in thirteen (13) separate buildings within the Project. Each Living Unit is designed and intended for the use and occupancy as a residence by a single family.

Section 7. "Owner" shall mean and refer to any person, firm, corporation or other association which owns a Living Unit and the Lot beneath such Living Unit, but shall not include any person, firm, corporation or other association having such interest merely as security for the performance of an obligation.

Section 8. "Association Property" shall mean (i) all tangible and intangible personal property acquired by Developer in connection with its acquisition of the Property and transferred to the Association by Developer in accordance with Article III hereof, (ii) the Limited Common Property transferred to the Association by Developer in accordance with Article III hereof, and (iii) any real or personal property which shall hereafter be acquired, owned, held or controlled by the Association for the use, benefit and enjoyment of the Owners as a whole, and any replacements, substitutions or additions thereto. No Owner shall have any proprietary interest in the Association Property, and the transfer by Developer of a Lot and Living Unit to an Owner shall not transfer to such Owner any proprietary interest in the Association Property.

Section 9. "Parking Area" shall mean those portions of the Limited Common Property as shown on the recorded subdivision plat of the Project, to which an exclusive right of use shall automatically be conveyed for parking purposes only to each Owner at the time of purchase of his or her Lot and Living Unit. Each Parking Area shall consist of two parking spaces for each Lot, and one of which parking spaces will be under a carport, and the other parking space will be uncovered and immediately adjacent to the parking space under the carport.

Section 10. "Storage Area" shall mean those portions of the Limited Common Property as shown on the recorded subdivision plat of the Project to which an exclusive right of use for storage purposes only shall automatically be transferred to each Owner at the time of purchase of his or her Lot and Living Unit.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Carroll County, Arkansas, and is more particularly described in Exhibit "A". Such real property is commonly known as the Oakpoint II Townhouses as per plat recorded in Cabinet A, Slides 89 and 90 et seq., and dated April 13, 1982, in the office of the Circuit Clerk and Ex-Officio Recorder for Carroll County, Arkansas.

ARTICLE III
PROPERTY INTERESTS WITHIN THE PROJECT

Section 1. Lot and Living Unit. Developer shall sell, transfer, and convey to each purchaser of a Lot and Living Unit fee simple title to such Lot and Living Unit. After recordation of the Warranty Deed to such property, each purchaser shall automatically become an Owner as defined in this Declaration. No Owner shall have the right, for any purpose, to sever his or her interest in his or her Lot from his or her interest in his or her Living Unit, and such interests shall not be severally sold, conveyed, encumbered, hypothecated or otherwise severally dealt with, and any violation or attempted violation of this Section shall be void and of no effect.

Certain portions of each Lot extend approximately five (5) feet beyond the exterior of the Living Unit situated upon that Lot. Such portions shall be subject to the same restrictions as exist upon the Limited Common Property and shall be maintained by the Association at its sole cost and expense. No Owner shall have the right to landscape, garden, or in any way alter such five (5) foot portion of his or her Lot. However, nothing contained in this Declaration shall exempt any Owner from paying real property taxes and assessments on his or her entire Lot, and the Association shall not be responsible for paying any portion of such real property taxes and assessments.

Section 2. Non-Exclusive Easement and Right to Use Limited Common Property. In addition to its Lot and Living Unit, each Owner shall receive as an incident of the conveyance of his or her Lot and Living Unit, whether or not separately described, a non-exclusive right and

easement of ingress, egress, use and enjoyment in and to the Limited Common Property and those portions of all Lots lying outside the exterior parameters of the Living Units, and such easement shall be appurtenant to and shall pass with the title to every Lot and Living Unit, subject to the following:

- (a) The right of the Association to suspend the Owner's right to use the Limited Common Property (other than ingress and egress to his or her Lot, Living Unit, Parking Area, and Storage Area) for any period during which any assessment against such Owner's Lot remains unpaid for greater than thirty (30) days, or for any other infraction of this Declaration or of the By-laws or rules and regulations of the Association;
- (b) The right of the Association to establish reasonable rules and regulations and to charge reasonable fees for the use of the Limited Common Property and any improvements thereon;
- (c) The right of the Association to borrow money for the purpose of improving or repairing the Limited Common Property and improvements thereon and to mortgage such property for such purposes; and
- (d) The right of individual Owners to the exclusive use of Parking Areas and Storage Areas.

Any Owner may assign his or her right to use the Limited Common Property to his or her tenants or contract purchasers who reside in his or her Living Unit.

Section 3. Non-Exclusive Easement for Support. Each Owner shall receive as an incident of the conveyance of his or her Lot and Living Unit, whether or not separately described, a non-exclusive easement appurtenant to the Lot and Living Unit included in said conveyance, for support over, across and through any portion of the Limited Common Property or of any Living Unit immediately adjacent to such Owner's Living Unit required for the structural support of the Living Unit possessed by such Owner.

Section 4. Exclusive Right to Use Parking Area. Each Owner shall receive as an incident of the conveyance of his or her Lot and Living Unit, whether or not separately described, an exclusive right to use, for parking purposes only and subject to the provisions hereof, one Parking Area as shown on the recorded subdivision plat of the Project. The Parking Area shall be designated to Owner at the time of closing of his or her Lot purchase, and a record

of designated Parking Areas shall be maintained by the Association. Such exclusive right to use may be assigned by Owner to his or her tenants or contract purchasers who reside in his or her Living Unit.

Section 5. Exclusive Right to Use Storage Area. Each Owner shall receive as an incident of the conveyance of his or her Lot and Living Unit, whether or not separately described, an exclusive right to use, for storage purposes only and subject to the provisions hereof, a Storage Area as shown on the recorded subdivision plat of the Project. The Storage Area shall be designated to Owner at the time of closing of his or her Lot purchase, and a record of designated Storage Areas shall be maintained by the Association. Such exclusive right to use may be assigned by the Owner to his or her tenants or contract purchasers who reside in his or her Living Unit.

Section 6. Title to Limited Common Property and Association Property. Developer shall convey legal title to the Limited Common Property and to any other Association Property, free and clear of all liens and encumbrances other than this Declaration, to the Association within ninety (90) days after the formation of the Association.

Section 7. Obligations of Association Respecting Limited Common Property and Portions of Lots not beneath Living Units. The Association shall be responsible for the exclusive management and control of the Limited Common Property and of those portions of all Lots lying outside the exterior parameters of the Living Units. Other than for the Parking Areas and Storage Areas (which shall be maintained in a clean and orderly manner by each Owner with respect to his or her assigned areas), the Association shall keep the Limited Common Property and portions of all Lots in good, clean, attractive and sanitary condition, order and repair. Nothing contained in this Section shall prohibit the Association from hiring street cleaners or similar machinery to keep the Parking Areas in clean and attractive condition.

ARTICLE IV ASSOCIATION

Section 1. Managing Body. Oakpoint II Townhouse Association, Inc., an Arkansas non-profit corporation, shall be the Association and the management body of the Project.

Section 2. Membership in Association. Each Owner (including Developer as to any unsold or retained Lots and Living Units) shall automatically, upon becoming an Owner of a Lot and Living Unit, become a member of the Association and shall remain a member thereof until he shall cease to be an Owner. The Owner may assign his or her rights described in Sections 2, 4 and 5 of Article III to a lessee, tenant or contract purchaser, so long as the same shall be in writing and upon ten (10) days' prior written notice to the Association.

Section 3. Transfer of Membership. The membership of each Owner in the Association is appurtenant to and inseparable from his or her ownership interest in his or her Lot and Living Unit and shall be automatically transferred upon any authorized transfer or conveyance of his or her Lot and Living Unit to any transferee or grantee, and except as provided herein, said membership shall be non-transferable.

Section 4. Voting Rights. The Association shall have one class of voting membership: Members: Members shall be all Owners other than the Developer. Each Owner of a Lot who is a member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot or living unit, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, nor shall there be any split votes among multiple Owners of a single lot.

ARTICLE V

BOARD OF DIRECTORS

Section 1. Board of Directors. The Board of Directors of the Association shall be five (5) persons, all of whom are owners.

Section 2. Election of Board of Directors. At the time of the first annual meeting of the members of the Association, the members thereof (including Developer with respect to any unsold or retained Lots) shall elect, in accordance with the By-laws, a Board of Directors replacing the initial Board of Directors as defined in Section 1 of this Article.

Section 3. After the first annual meeting of the Board of Directors, the members of the Association shall elect, in accordance with the By-Laws, members of the Board of Directors.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot owned by it hereby covenants and each Owner of any Lot, by acceptance of a deed therefore, whether or not expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association (i) annual assessments; and (ii) special assessments under Article VI, Section 4, and under Article XI, Section 25. Such Assessments may be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees as hereinafter provided, shall be a charge on the Lot and Living Unit and shall be a continuing lien on the Lot and Living Unit against which each Assessment is made. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorneys' fees as hereinafter provided, shall also be the personal obligation of the person who was the Owner of the Lot and Living Unit at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor in title; however, the charge against the Lot and Living Unit for delinquent Assessments is a charge against the Lot and Living Unit, notwithstanding transfer of title to the Lot and Living Unit.

Section 2. Purpose of Assessments. The Assessments shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and in particular for the improvement and maintenance of the Limited Common Property, those portions of all Lots lying outside of the exterior parameters of the Living Units, and the exterior of and party walls of the Living Units situated within the Project, including, but not limited to, (i) the payment of taxes and assessments on the Limited Common Property, (ii) the payment of insurance obtained by the Association on the Limited Common Property, the portions of all Lots lying outside of the exterior parameters of the Living Units, and Living Units in accordance with Article VIII hereof, and (iii) the repair, replacement, and additions to the Limited Common Property, the portions of all Lots lying outside of the exterior parameters of the Living Units, and Living Units authorized by the Board of Directors of the Association, and for the cost of labor, equipment, materials, management and supervision of such repairs and maintenance. Assessments shall also be used to rebuild and/or repair damaged and destroyed Living Units or

damaged or destroyed portions of the Limited Common Property or portions of Lots lying outside of the exterior parameters of the Living Units in the event that the Association fails to maintain sufficient insurance to cover the cost of such repair or replacement in the event of a fire or other catastrophe.

Section 3. Amount of Annual Assessments. Owners of Lots (including the Developer for any Lots remaining unsold or retained by Developer) shall begin paying annual assessments on the date specified in Section 8 of this Article. The initial annual assessment shall be \$720.00 per Lot. From and after January 1, 1983, the annual assessment may be increased in accordance with the procedures outlined in Section 5 of this Article V, or, if deemed appropriate by the Board of Directors of the Association after consideration of current maintenance costs and future needs of the Association, the amount of such annual assessment may be reduced.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy special assessments for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Living Unit or any portion of the Limited Common Property or portions of any Lots (s) lying outside the exterior parameters of the Living Units including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes in each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Amount of Annual Assessments. From and after January 1, 1983, the maximum annual assessment may be increased by a majority vote of the Board of Directors of the Association each year not more than twenty percent (20%) above the maximum annual assessment for the previous year without a vote of the members of the Association.

From and after January 1, 1983, the Association may change the amount of the annual assessments by any amount above the maximum annual assessment for the previous year. Any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

In the event that neither the Board of Directors nor the Association elects to increase the annual assessment in any year, the annual assessment for that year shall remain at the amount prevailing for the previous year.

Section 6. Uniform Rate of Assessment. Annual and special assessments shall be paid at a uniform rate by each lot, so that each owner pays an equal assessment regardless of the size of his or her Living Unit or Lot. Annual assessments shall be paid without regard to the extent of use or non-use of the Limited Common Property, and such assessments shall be collected on a monthly basis. Special assessments shall be collected at the time as determined by the Board of Directors of the Association, and shall also be divided equally among the Owners, except that for any damage or destruction to any portion of the Limited Common Property or to any portion of any lot lying outside the exterior parameters of any Living Unit or to the exterior of or any party wall of any Living Unit caused by any grossly negligent, intentional or malicious act or omission of any Owner, any member of his or her family, guests, tenants, agents, licensees or employees, the Board shall assess only such Owner for the cost of repair or replacement of such damaged area. In the event of such occurrence, such special assessment shall thereafter be due as a separate debt of such Owner and payable in full to the Association within thirty (30) days following the mailing of such notice from the Board of Directors of the Association.

Section 7. Required Quorum for Levying Special Assessments for Capital Improvements and for Changing Amount of Annual Assessments. At any meeting called as provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Sections 4 and 5, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on the date (hereinafter referred to as the "Commencement Date") fixed by the Board of Directors of the Association. The Commencement Date shall fall on the first day of a month. The first annual assessments shall be made for the balance of the calendar year in which the Commencement Date falls and shall be come due on the Commencement Date. Annual assessments shall be payable on a monthly basis

on the first day of each month. The annual assessments for any year after the first year shall become due on the first day of March of each year.

The amount of the annual assessments which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment specified in Section 3 hereof as the remaining number of months in that year bears to twelve. The same prorated reduction in the amount of the assessment shall apply to the first assessment levied against any property which may hereafter be added to the Lots within the Project now subject to assessment if such assessments fall due at a time other than the beginning of any assessment period.

The due date of any special assessment under Sections 4 or 6 hereof shall be fixed in the resolution authorizing such assessment.

Section 9. Assessment Duties of the Board of Directors. The Board of Directors of the Association shall establish the Commencement Date as well as the amount of the annual assessment at least thirty (30) days in advance of (i) the Commencement Date, or (ii) the first of March of any subsequent calendar year. The Board of Directors of the Association shall cause records to be kept of the due dates and payments made by each Lot within the Project, and such records shall be kept in the office of the Association and shall be open to inspection to any Owner.

Written notice of all Assessments established by the Board of Directors or by the Association shall be sent to every Owner.

The Association shall upon demand at any time furnish to any Owner liable for an annual or special assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of the Association. If the Assessments are not paid on the dates specified by the Board of Directors in accordance with Sections 6 and 8 above, then such Assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, becoming a continuing lien on the Lot which shall bind such Lot in the hands of the then-Owner, his or her or her heirs, devisees, personal representatives and assigns. The personal obligation of the then-Owner to pay such Assessment,

however, shall remain his or her or her personal obligation for the statutory period and shall not pass to his or her or her successors in title unless expressly assumed by them.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at the maximum rate of interest allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Lot and Living Unit, and there shall be added to the amount of such Assessment a reasonable attorneys' fee, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of such action.

No Owner may exempt himself from liability for Assessments provided herein by (i) his or her non-use of the Limited Common Property, (ii) his or her waiver of the use of the Limited Common Property, or (iii) by abandonment of Owner's Lot.

Section 11. Subordination to the Lien of Mortgages. The lien of the Assessments provided for herein shall be subject and subordinate to the rights of any mortgagee of any recorded first mortgage or second mortgage upon any Lot made in good faith and for value. However, such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure. In the event of such sale or foreclosure, the mortgagee (or person holding the beneficial interest under any such mortgage) shall be obligated to pay all Assessments during the foreclosure period, and after such foreclosure sale, the purchaser of the Lot at such sale or transfer shall be responsible for paying all subsequent Assessments. It is the intent of this Declaration that no such sale or transfer shall relieve any Lot from liability for any Assessment thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 12. Exempt Property. All Limited Common Property within the Project shall be exempt from the Assessments and liens created under this Declaration. However, no Lot and Living Unit shall be exempt from any such Assessment or liens.

ARTICLE VII
EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance; Party Walls. Unless otherwise specified in the By-Laws of the Association, the Association shall, in addition to providing maintenance upon the Limited Common Property and to those portions of all Lots lying outside the exterior parameters of the Living Units, provide exterior maintenance upon each Living Unit as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. In addition to such exterior maintenance, the Association shall provide weatherproofing and structural maintenance, whether interior or exterior, for party walls within Living Units.

Section 2. Assessment of Cost. The cost of such exterior and party wall maintenance shall be assessed against all Lots equally (except as provided in Article VI, Section 6 above) regardless of which Living Unit(s) upon which such maintenance is performed. The cost of such maintenance shall be added to and become a part of the annual assessment to which each Lot and Living Unit is subject, and as part of such annual assessment, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article VI hereof.

Section 3. Access at Reasonable Hours; Emergencies. For the purpose solely of performing the exterior and party wall maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to Owner, to enter upon any Lot or exterior or interior of any Living Unit at reasonable hours. Entry into any Living Unit for repair of structural damage to party walls within the interior of such unit shall be made in the presence of Owner or a representative of Owner. In the event of any situation deemed to be an emergency in the judgment of the Chairman of the Board of Directors of the Association or the Association's manager (if any), or his or her representative, exterior and interior maintenance may be performed upon any Living Unit without prior notice to the Owner and without such Owner or Owner's representative being present. However, no such notice or emergency shall be necessary for the Association to perform its normal maintenance and upkeep on those portions of all Lots lying outside the exterior parameters of the Living Units.

ARTICLE VIII
INSURANCE

Section 1. Physical Damage Insurance. For each Lot owned by Developer within the Project, Developer hereby irrevocably nominates, and each Owner by acceptance of a deed for a Lot, is deemed to irrevocably nominate the Association, as trustee, with authority to obtain and maintain fire and extended coverage insurance for all Living Units, the improved portions of all Lots lying outside the exterior parameters of the Living Units, and the Limited Common Property, insuring such buildings, improvements and fixtures in an amount sufficient to cover the full replacement costs thereof. The By-Laws of the Association shall set forth the amount and type of fire and extended coverage insurance to be obtained and shall define the terms and conditions of the insurance policies.

Section 2. Other Insurance. The Association shall also obtain comprehensive liability and workmen's compensation insurance coverage, along with such other forms of insurance coverage as the Association may from time to time direct.

Section 3. Common Expense. Premiums for all insurance obtained by the Association, except policies obtained individually by Owners, shall be a common expense payable from annual assessments levied by the Association in accordance with Article VI hereof.

Section 4. Insurance by Owners. Each Owner may obtain additional insurance for his or her own benefit at such Owner's expense, provided that such policies contain waiver of subrogation clauses and further provided that the liability of the carrier issuing insurance procured by the Association shall not be affected nor diminished by reason of any such additional insurance carried by any Owner.

Section 5. Limitation on Hazards. Under no circumstance shall an Owner permit or suffer anything to be done or left in his or her Living Unit or in or on the Limited Common Property or the portion of his or her Lot lying outside of the exterior parameters of his or her Living Unit which will increase insurance rates for the Association or cause termination of insurance procured by the Association.

ARTICLE IX

DAMAGE OR DESTRUCTION

The Association shall be obligated to repair, restore and rebuild all or any portion of any of the Limited Common Property, Lots, Living Units or other improvements or fixtures within

the Project which are damaged or destroyed by fire or other acts of God or by the negligence or omission of any person. Each owner of any Lot by acceptance of a deed therefore agrees to be bound by the By-Laws of the Association as they pertain to damage or destruction.

ARTICLE X
COMMITTEE OF ARCHITECTURE

There has previously been created and established a Holiday Island Committee of Architecture, which Committee of Architecture has as its general purposes the provision for the maintenance of high standards of architecture and construction design for the enhancement of the aesthetic qualities of Holiday Island, Arkansas, including this Project which lies within Holiday Island. The Project and all Owners living within the Project shall be subject to the jurisdiction of the Committee of Architecture in the same manner as other property owners in Holiday Island, Arkansas.

ARTICLE XI
USE RESTRICTIONS

Section 1. Residential Use of Living Unit. No Owner shall occupy or use his or her Living Unit, or permit the same or any portion thereof to be occupied or used for any purpose other than a private single-family residence for such owner and his or her family, provided, however, that this section shall not prohibit the lessees or contract purchasers of any Living Unit from residing in such unit (although such lessees or contract purchasers must use such Living Unit as a single-family residence), nor shall this Section prohibit any Owner from assigning his or her right to use the Limited Common Property, his or her Parking Area, and/or his or her Storage Area to any such lessees or contract purchasers.

Section 2. Interior of Living Unit. Each Owner shall maintain in good repair the interior of his or her Living Unit. Subject to the rights of the Association with respect to maintenance of party walls, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise furnish and decorate the interior surfaces of the walls, partitions, ceilings, floors, windows and doors within his or her Living Unit.

Section 3. Additions, Alterations and Structural Changes. Nothing shall be done in, on, or to any Lot, Living Unit or the Limited Common Property, including Parking Areas and Storage Areas, which will impair the structural integrity of any portion of the improvements within the Project. Other than as provided in Section 2 above, no Owner shall be permitted to alter in any manner his or her Living Unit, the Lot beneath or around his or her Living Unit, or any portion of the Limited Common Property, including the Parking Area and Storage Area, without the prior written approval of the Committee of Architecture and of the Board of Directors of the Association.

Section 4. Commercial Structures. No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any portion of any Lot or the Limited Common Properties. This prohibition shall not apply to any business or structure that may be placed within the Project that is used exclusively by a public utility company in connection with the furnishing of public utility services to the Living Units and to the Limited Common Property.

Section 5. Outbuildings, Tanks and Structures Prohibited. No outbuilding, above-ground tank for storage of gas or liquids, or other detached structure appurtenant to any Living Unit may be erected on any Lot, Living Unit or the Limited Common Property without the prior written consent of the Board of Directors of the Association and Committee of Architecture.

Section 6. Pets. No animals, birds, reptiles or pets of any kind shall be raised, bred or kept on or within any Living Unit, Lot, or Limited Common Property, or portion thereof, except that dogs, cats, or other domestic household pets may be kept within a Living Unit and any portion of the Project which may be designated therefore by the Association, provided that no bird, reptile or animal of any kind shall be kept, bred or maintained (i) for any commercial purposes, (ii) in unreasonable numbers, or (iii) for any purpose if there would be involved an odor or noise such as would unreasonably disturb the use and enjoyment of any portion of the Project by other Owners. The Owner of any pet shall and does hereby indemnify the Association, its Board of Directors, its officers, its manager, and staff (if any), and agrees to hold it and/or each of them harmless from and against any and all loss, cost, liability or expense of any kind or character whatsoever arising from or growing out of having pets within the Project. Any inconvenience, damage or injury caused by such domestic pet or pets shall be the responsibility of the respective Owner thereof.

Section 7. Nuisance. No noxious, offensive or illegal activity shall be carried on nor anything be done or placed in or on any Living Unit or in or on any portion of the Project which is or may become a nuisance or cause unreasonable embarrassment, disturbance, noise or annoyance to any other Owner in the use and enjoyment of his or her Living Unit or in the use and enjoyment of any portion of the Project. Without limiting the foregoing, no horns, whistles or whistles, bells or other sound devices, except security devices approved for use by the Association which are used exclusively to protect persons or property located in or on the Project, shall be placed in or used in or upon any portion of the Project. This Section shall not preclude (i) the use and operation of stereos, radios, television or musical instruments where the volume is maintained at a reasonable level, and (ii) noise associated with alterations of Living Units done with the permission of the Board of Directors of the Association and the Committee of Architecture. Each Owner shall fully comply with any and all applicable laws, rules, ordinances, statutes, regulations and requirements of this Declaration and of any government agency or authority with respect to the occupancy and use of his or her Lot and Living Unit.

Section 8. Timber. No tree within the Project shall be cut, severed, sprayed or in any manner destroyed unless written permission to do so has been previously granted by the Committee of Architecture.

Section 9. Vehicles. No Owner, nor any member of his or her family, guests, agents, licensees or employees shall park or cause to be parked any vehicle in such manner as to impede or prevent ready access to any entrance or exit of any Parking Area by another vehicle. No Owner shall permit any member of his or her family, guests, tenants, agents, licensees or employees to use any Parking Area, the exclusive use of which has been conveyed to another Owner, without such Owner's consent. No Owner shall construct, repair, service, or maintain any motor vehicle within any portion of the Project, except for emergency repairs thereto to the extent necessary for the movement thereof to a proper repair facility. No motor vehicle may be stored or allowed to be parked in any Parking Area or within the Limited Common Property or on any portion of any Lot unless said vehicle is in evident good operative condition. No automobile, truck, bus, van, recreational vehicle, trailer, boat, tent, or temporary structure of any nature whatsoever, shall ever be parked, located or otherwise maintained within the Project or any portion of the Parking Area unless the Committee of Architecture has approved said parking location or maintenance together with any restrictions the Committee of Architecture deems

appropriate, provided that it is not the intention of this Paragraph to exclude the temporary parking of such vehicles, boats, and boat trailers less than twenty (20) feet in length, or trucks one-half ton or smaller in size on any portion of the streets or Parking Area located within the Limited Common Property. Guest parking, limited to automobiles, may be permitted by the Association to exist in those areas designated as “Guest Parking” by the Association, for a period of time not in excess of twenty-four (24) hours.

Section 10. Billboards. The construction or maintenance of billboards, advertising boards, structures or signs upon any Lot, on any portion of the Limited common Property, or in the window of any Living Unit is specifically prohibited, except that billboards, advertising boards, structures or signs used by the Developer or its agent, advertising the sale or rental of such Lots and Living Units during the construction and sales period are permitted, as well as signs approved by the Committee of Architecture displaying the name of the Project, buildings within the Project, parking instructions or regulations relating to the use of the Limited Common Property; provided, however, that a temporary permit for signs advertising the sale or rental of any Lot and Living Unit may be obtained upon application to the Committee of Architecture.

Section 11. Cesspool. No leaching cesspool shall ever be constructed for use on any Lot or Limited Common Property.

Section 12. Flammable, Corrosive or Explosive Materials. No Owner nor any member of his or her family, tenant, agent, employee, licensee or guest shall at any time, bring into, keep or maintain in or on any portion of the Project any highly corrosive or explosive solid, liquid, gas, chemical substance or other material which may be extra hazardous to life, limb or property without in each case obtaining the prior written approval of the Committee of Architecture.

Section 13. Fences. No fence, enclosure or part of any building of any type or nature shall ever be constructed, erected or placed on any Lot or on the Limited Common Property without the prior written consent of the Committee of Architecture. If approved by the Committee, all fences shall be of wood, stone, brick or other native material construction and their design shall be approved by the Committee of Architecture. In no event shall a fence exceed four (4) feet in height, unless a written waiver has been previously obtained from the Committee of Architecture.

Section 14. Air-conditioning Units; Television Antennae. No air-conditioning unit, evaporative cooler, television antennae, television satellite discs, or other object shall be placed

upon or above the roof of any Living Unit or on any Lot of the Limited Common property except and unless the same is aesthetically concealed from view pursuant to plans submitted to and approved by the Committee of Architecture, and then only when, in the determination of the Committee of Architecture, the same is not aesthetically objectionable and is otherwise in conformity with the overall development of the Project.

Section 15. Laundry. No drying or airing of any laundry, clothing or bedding shall be permitted anywhere within the Project, and clothes-hanging devices, such as lines, reels, poles, frames, etc., shall not be erected on any portion of the Project.

Section 16. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved on all Limited Common Property, within these easements, as well as those otherwise reserved herein, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area within any Lot and all improvements in such Lot shall be maintained continuously by the Association except for those improvements for which a public authority or utility company is responsible.

Section 17. Natural Flowing Springs or Creeks. Under no circumstances shall any Owner be permitted to obstruct, dam, or in any way divert water from a naturally flowing stream, creek, or irrigation ditch.

Section 18. Unnatural Drainage. Under no circumstances shall any Owner or any other person be permitted to alter the topographic conditions of any Lot or Limited Common Property within the Project in any way that would change the natural course of drainage to the detriment of any other Owner within the Project.

Section 19. Wells. No Owner or occupant of any Living Unit shall be permitted to drill a well within the Project.

Section 20. Ecological Control. Under no circumstances shall any Owner disturb the natural soil, trees, grasses or shrubbery planted within the Project without the prior written approval of the Association and the Committee of Architecture.

Section 21. Resubdivision. No Lot nor Limited Common Property shall be resubdivided into smaller lots nor conveyed or encumbered in less than the full original dimensions of any Lot

or Limited Common Property as shown on the recorded subdivision plat, unless such resubdivision is previously approved in writing by the Board of Directors of the Association and the Committee of Architecture. Nothing herein contained shall prevent the dedication or conveyance of a portion of the Limited Common Property for recreational or equestrian easements.

Section 22. Encroachments. Each Lot and the Limited Common Property shall be subject to an easement for encroachment created by construction, settling and overhangs of the Living Units or other improvements within the Project as designed or constructed by Developer. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.

Section 23. Children. Each Owner shall be accountable to the Association and the other Owners for the conduct and behavior of children residing in or visiting his or her Living Unit and any damage to any portion of any Lot or the Limited Common Property, Association Property or property of another Owner caused by such children shall be repaired at the expense of the Owner with whom said children are residing or visiting.

Section 24. Storage of Tools, Trash and Junk. Tools, landscaping instruments, household effects, machinery or machinery parts, empty or filled containers, boxes or bags, trash, materials, or any other items that may detract from the aesthetic value of the Project shall be stored and placed so as to be concealed from view from all public rights-of-way. Trash for collection may be placed at the street right-of-way line on regular collection days for a period not to exceed eighteen (18) hours before pick up. Storage of junk, inoperable cars, and other unsightly objects on any portion of any Lot or on the Limited Common Property, including the Parking Area or Storage Area, is expressly prohibited. Storage of any material under any floor of a stilt-constructed dwelling is also prohibited.

Section 25. Monetary Penalty. Subject in all events to the provisions of Article XII, Section 1 hereof, but recognizing the need of a reasonable means of encouraging and insisting upon compliance with the provisions of this Article without resorting to suits for injunctive relief, the Board of Directors of the Association is hereby authorized to assess any Owner found to be in violation of any provision of this Article a sum not to exceed (i) one thousand dollars (\$1000.00) for any one violation or (ii) five thousand (\$5,000.00) in any one year. Any

assessment made pursuant to this section shall be a special assessment against such Owner in Accordance with the provisions of Article VI hereof.

ARTICLE XII
BREACH OR DEFAULT BY OWNERS

Section 1. Remedy at Law Inadequate. Except for the non-payment of any assessments provided for herein (the remedy for which is provided in Article VI hereof), it is hereby expressly declared, stipulated and agreed that the remedy at law to recover damages for the breach, default or violation of any of the Covenants and Restrictions contained in this Declaration are inadequate and the failure of any Owner, tenant, occupant or user of any Living Unit or of any portion of any Lot or of the Limited Common Property or facilities thereof to comply with each and all of the terms and provisions of this Declaration, the rules, regulations, decisions, resolutions and By-Laws of the Association and its Board, all as lawfully amended from time to time, may be enjoined by appropriate legal proceedings instituted by the Developer, any Owner, the Association, its Board of Directors, its officers, its manager (if any) and by their respective successors and assigns.

Section 2. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law or available in equity shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or different times, of any other such rights or remedies for the same or different defaults or breaches or for the same or different failures of the Owners or others to perform or observe any provision of this Declaration.

Section 3. Failure Not a Waiver. The Failure of Developer, any Owner, the Association, its Board of Directors, its officer, or its manager (if any), to enforce any of the Covenants and Restrictions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Developer.

Section 4. Suspension of Voting Rights. In the event any Owner shall fail for a period of thirty (30) days to pay when due any Assessment, said Owner shall not be entitled to vote upon any matter put to a vote at any annual or special meeting of the Association.

Section 5. Suspension of Right to Use Limited Common Property. In the event any Owner shall fail for a period of thirty (30) days to pay when due any Assessment, the Board of Directors of the Association may suspend his or her right to use the Limited Common Property (other than ingress and egress to his or her Lot, Living Unit, Parking Area and Storage Area) until such Assessment(s) is made current.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Duration. The Covenants and Restrictions contained in this Declaration shall run with and benefit the land within the Project and shall be binding upon the Owners and Association, its Board of Directors, its officers, its manager and staff (if any) and their successors and assigns and shall continue in full force and effect for a terms of twenty-five (25) years from the date of recordation of this Declaration. At that time, this Declaration shall be automatically extended for successive periods for ten (10) years each unless, within six (6) months prior to the expiration of the initial twenty-five (25) year term or any ten (10) year extension period, a written agreement approved by the Owners entitled to vote, which Owners hold in the aggregate at least seventy-five percent (75%) of the total Lots within the Project, shall be placed on record in the office of the Circuit Clerk and Ex-Officio Recorder for Carroll County, Arkansas, terminating the effectiveness of this Declaration.

Section 2. Amendment. This Declaration may be amended in whole or in part by an instrument signed by at least seventy-five percent (75%) of the Owners. Such amendment must be recorded in the Office of the Circuit Clerk and Ex-Officio Recorder for Carroll County, Arkansas, in order to be effective. Notwithstanding anything in this Declaration to the contrary, any amendment to this Declaration which would defeat the obligation of the Association to maintain the Limited Common Property and the exterior of the Living Units in a first-class condition and in a good state of repair or which would defeat the assessment procedure set forth in this Declaration to assure said maintenance, must be approved by the Committee of Architecture.

Section 3. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to be properly sent when mailed, postage prepaid, via regular

first-class mail to the last known address of the person who appears as Owner in the records of the Association at the time of such mailing.

Section 4. Dedication. Developer reserves the right to convey and/or dedicate rights of way and easements for public utilities, communication cables and/or drainage purposes over portions of the Lots and the Limited Common Property, and the privilege to assign this right at any time to its successors or assigns. This right shall run with the land for the time herein provided and as may be extended.

Section 5. No Public Rights in the Project. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Project to the general public or for any public use or purpose whatsoever.

Section 6. Severability. In the event that any of the provisions of this Declaration conflict with any other of the provisions herein, the more restrictive of the two shall govern. Invalidation of any one or more of the provisions of this Declaration by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 7. Article and Section Headings. The headings of the Articles and Sections of this Declaration are inserted solely for the convenience of reference and are not a part and are not intended to govern, limit or aid in the construction of any term or provision of this Declaration.