

**DECLARATION
OF
CONDOMINIUM
OWNERSHIP
AUDUBON TRACE
CONDOMINIUM**

*** STATE OF LOUISIANA
*
* PARISH OF JEFFERSON
*
* FILED: _____
*
* RECORDED: _____

* * * * *

BE IT KNOWN, that on this 14th day of June, 1984,

BEFORE ME, the undersigned, Notary Public, duly commissioned and qualified in and for the Parish of Jefferson, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned;

PERSONALLY CAME AND APPEARED:

BRIGNAC-DERBES, INC., a Louisiana corporation domiciled in the Parish of Jefferson, State of Louisiana, appearing herein through Ronald L. Brignac, as duly authorized by resolution of the Board of Directors dated June 13, 1984, which is annexed hereto as Exhibit "E"

and which declared as follows:

WHEREAS, the Declarant is the record owner of certain real property in the Parish of Jefferson, State of Louisiana, more fully described on Exhibit A which is attached hereto;

WHEREAS, the Declarants intend to and do hereby submit the above described real property, together with all the buildings, improvements and other permanent fixtures of whatsoever kind thereon or to be affixed thereto, and all rights and privileges belonging or in anywise pertaining thereto, to the provisions of the Louisiana Condominium Act (La. Rev. Stat. 9:1121.101, et seq.) for the purpose of establishing a condominium regime with respect thereto; and

WHEREAS, the Declarant is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the Property (hereinafter defined) certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, the Declarant desires and intends that the several owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Property shall, at all times, enjoy the benefits of, and shall hold their interest subject to the rights, servitudes, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of such property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof.

NOW, THEREFORE, the Declarant, as the record owner of the above described real property and for the purpose above set forth, hereby declares as follows: ■

1. DEFINITIONS.

As used herein, unless the context otherwise requires:

- A. “Act” shall mean the Louisiana Condominium Act of the State of Louisiana (now appearing as La. Rev. Stat. 9:1122.101 through 9:1124.117).
- B. “Association” shall mean “Audubon Trace Condominium Association, Inc.”, the non-profit corporation caused to be incorporated by the Declarant under the laws of the State of Louisiana consisting of Unit Owners.
- C. “Board” shall mean the Board of Directors, the governing authority of the Association.
- D. “Building” shall mean the building or buildings located on the real property and forming part of the Property and containing the Units, as shown on the Plat, annexed hereto as Exhibit “B”.
- E. “Common Elements” shall mean the portion of the condominium property not a part of the individual Units, and shall include, but shall not be limited to, the Land, foundations, hallways, stairways, entrances and exits, common parking area, storage areas, basement, roof, incinerator, pipes, ducts, electrical wiring and

conduits (except pipes, ducts, electrical wiring and conduits situated entirely within a Unit and serving only said Unit), public utility lines, floors, ceilings and perimeter walls of Units (other than such portions thereof included within Unit boundaries as shown on the Plat), structural components of the Building, outside walks and driveways, landscaping, and all other portions of the Property except the individual Units, Structural components located within the boundaries of a Unit shall be part of the Common Elements.

- F. “Condominium” shall have the meaning ascribed thereto in the Act and shall refer to this Audubon Trace Condominium.
- G. “Declaration” shall mean this Declaration of Condominium Ownership by which the Property is submitted to the provisions of the Act, as hereinabove provided, and such Amended Declarations as may be entered into from time to time hereafter.
- H. “Declarant” shall mean Brignac-Derbes, Inc. or its successors or assigns.
- I. “Land” shall mean the real estate described shown on Exhibit “A” annexed hereto.

- J. “Limited Common Elements” shall mean those Common Elements serving exclusively a singled Unit or Units, including specifically, but not by way of limitation, balconies, patios, terraces and such portions of the perimeter walls, floors, ceiling, doors, vestibules, windows, entryways, attic space, reserved parking spaces and all associated fixtures and structures therein as lie outside a Unit boundary, but which serve only said Unit or Units. The Board may from time to time designate other portions of the Common Elements as Limited Common Elements including, but not limited to, automobile parking spaces, storage lockers, rubbish collection areas, and such heating, plumbing and electrical fixtures and all associated pipes, ducts and wiring as may serve exclusively a single Unit or group of Units.
- K. “Majority” or “Majority of the Unit Owners” shall mean the owners of more than 50% in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership of the Common Elements.

- L. “Person” shall mean an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- M. “Property” shall mean all interests in the Land, and all improvements and structures to be erected, constructed or contained therein or thereon, including buildings and all servitudes, rights and appurtenances belonging thereto, and all fixtures, equipments and furnishing intended for the mutual use, benefit or enjoyment of the Unit Owners.
- N. “Unit” shall mean a part of the Property, including one or more rooms and occupying one or more floors or part or parts thereof, designated or intended for individual ownership and use as a singular Unit of space for residential purposes, all of which Units and their respective locations and dimensions are shown on the Plat annexed hereto as Exhibit “B”, along with the “Limited Common Elements”. Each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes constituting the boundaries of such Unit as shown on the Plat; provided, however, that no foundations, main walls, roofs or other

principal structural parts of a Unit, and no pipes, wires, conduits, ducts, flues, shafts, or public utility lines situated within a Unit and forming part of any system serving one or more Units or the Common Elements shall be deemed to be part of said Unit.

- O. “Unit Owner” shall mean the person or persons whose estates or interest, individually or collectively, aggregate fee simple absolute ownership of a Unit.
- P. “Unit Ownership” shall mean a part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto. ■

2. SUBMISSION OF PROPERTY TO THE ACT.

- A. The Declarant, as the owner in fee simple of the Property, expressly intends to and by recording this Declaration does hereby submit the Property shown on Exhibit “A” to the provision of the Act. The Property shall be known as “Audubon Trace Condominium”.
- B. Additional Property shown on Exhibit “C” may become subject to this Declaration in the following manner:
- (1) Developer may, without the consent of any Owner or Mortgagees, at any time prior to May 1, 1991, add all or any portion of the Additional Property and any improvements thereon in one or more phases (hereinafter referred to as “Phase” or “Phases”) to the Project and to the concept of this Declaration by filing of record an Amendment to the Condominium Declaration for each Phase, which shall extend the concept of the covenants, conditions and restrictions of this Declaration, to the particular Phase added to the Project. This Additional Property may be added to the Project at difference times in

various sizes as the Developer sees fit and the Developer makes no assurances as to the order in which they will be added.

- (2) In the event a Phase is added to the Project as set forth in this Section, such addition when made shall automatically extend the jurisdiction, functions and duties of the Association to the particular Phase added to the Project. Upon the filing of the Amendment to the Condominium Declaration for each such Phase added to the Project, the percentage ownership in the Common Elements relating to each Unit and liability for assessments shall be adjusted. Each Condominium's undivided interest in the Common Elements shall be adjusted by dividing the total number of square feet in the Unit by the total number of square feet in all Units. The total percentage ownership in the General Common Elements shall always equal one hundred percent (100%).
- (3) All improvements to the Additional Property shall be consistent with initial improvements to the Project in terms

of quality of construction, architectural style, and principal materials employed in construction. All intended improvements to the particular Phase to be added to the Project must be substantially completed prior to the time such Phase is added to the Project.

- (4) The Developer shall not create more than a total of 231 Units in the entire Project which Units shall be for residential use only. ■

3. PLAT.

The Plat annexed hereto as Exhibit “B” sets forth the measurements, elevations, locations and other data, as required by the Act, including (i) the Building and each floor thereof, (ii) each Unit of the Building, (iii) the Common Elements, and (iv) the Limited Common Elements. ■

4. UNIT IDENTIFICATION.

Each Unit is identified on the Plat by a distinguishing number or other symbol. The legal description of each Unit shall refer to such identifying number or symbol. Every deed, lease, mortgage or other instrument shall legally describe a Unit by its identifying number or symbol as shown on the Plat and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. Except as provided in the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat. ■

5. **ASSOCIATION OF UNIT OWNERS AND ADMINISTRATION AND OPERATION OF THE PROPERTY.**

A. **The Association.**

The Declarant shall cause to be incorporated the Association. This Association, through the Board (who shall be elected as set forth in the By Laws), shall be the governing authority for all of the Unit Owners in the administration and operation of the Property as provided in the Act and in this Declaration and in the By Laws.

Whenever “Board” is used in this Declaration or in the By Laws, it shall mean and refer to the Association acting through its Board of Directors. The Board shall be elected by the Unit Owners in accordance with the By Laws. Neither the Board, the Association nor the Unit Owners shall be deemed to be using the Unit for residential purposes. All funds collected by the Board shall be held and expended for the purposes designated in the Declaration and By Laws and (except for such adjustment as the Board may require to reflect delinquent, prepaid and special assessments) shall be deemed to be held for the benefit, use and

account of all the Unit Owners in the percentages set forth in Exhibit “D” annexed hereto, and shall be administered in accordance with the provisions of the Declaration and By Laws. Each Unit Owner shall be a member of the Association so long as he shall be a Unit Owner, and such membership shall automatically terminate when he ceases to be a Unit Owner, and upon transfer of his ownership interest, the new Unit Owner succeeding to such ownership interest shall succeed to such membership in the Association.

B. Management of Property.

The Board shall have the authority to engage the services of an agent (hereinafter sometimes referred to as the “Managing Agent”) to maintain, repair, replace, administer and operate the Property, or any part hereof, to the extent deemed advisable by the Board, subject to the provision of subparagraph C below.

C. Initial Management Contract.

For a period of one calendar year from the date of recording of this Declaration (the “Initial Period”), there shall exist and become effective an initial management contract by and between

the Board and the Declarants, and the "managing Agent" whereby the entity shall maintain, repair, replace, administer and operate the Property during the Initial Period.

D. Indemnity.

The members of the Board, the officers thereof or of the Association and Declarant shall not be liable to the Unit Owners for any mistake of judgment, or any acts or omissions made in good faith. The Unit Owners shall indemnify and hold harmless each of such members, officers and Declarant against all contractual liability to others arising out of contracts made by such members, officers or Declarant, on behalf of the Unit Owners or the Association unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any Unit Owner arising out of any contract made by such members, officers or Declarant or out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as his percentage interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Each contract made by such

members, officers or Declarant or by the Managing Agent on behalf of the Unit Owners or the Association shall be executed by such members, officers or Declarant or the Managing Agent, as the case may be, as agents for the Unit Owners or for the Association.

E. Board's Determination Binding.

In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions or interpretation of application of the provisions of the Declaration or By Laws, the determination thereof by the Board shall be final and binding on each and all of such Unit Owners. ■

6. **COMMON ELEMENTS.**

A. **Ownership of the Common Elements.**

Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in the schedule annexed hereto as Exhibit "D" and by this reference made a part hereof as though fully set forth herein. Said ownership interests in the Common Elements shall be undivided interests, and the Common Elements shall be owned by the Unit Owners in accordance with their respective percentage of ownership as set forth in Exhibit "D". The ownership of each Unit and of the Unit Owner's corresponding percentage of ownership in the Common Elements shall not be separated.

B. **Covenant Against Partition.**

In order to effectuate the intent hereof and to preserve the Condominium and the Condominium method of ownership, the Common Elements shall remain undivided and no person, irrespective of the nature of his interest in the Common Elements, shall bring any action or proceeding for partition or division of

the Common Elements or any part thereof until the termination of the condominium regime established by this Declaration in accordance with provisions herein elsewhere contained or until the Property is no longer tenable, whichever first occurs, and in any events, all mortgages must be paid in full or all mortgagees must consent in writing, prior to bringing an action for partition.

C. Use of the Common Elements.

Each Unit Owner shall have the right to use the Common Elements (except the Limited Common Elements and assigned parking and storage facilities) in common with all other Unit Owners, as may be required for the purposes of access to and from and ingress to and egress from the Property and for use and occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to each Unit Owner, and the agents, servants, tenants, family members and invitees of each Unit Owner. Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving exclusively his Unit. Such rights to use and possess the Common Elements, including the Limited

Common Elements, shall be subject to and governed by the provisions of the Act and of this Declaration, the By Laws of the Association, and the rules and regulations governing the use, occupancy and control of the Common Elements as more particularly provided in the By Laws. The Board shall have the authority to lease or to grant licenses or concessions with respect to parts of the Common Elements, subject to the provisions of the Declaration and By Laws. ■

7. **COMMON EXPENSES.**

A. **Payment of Common Expenses.**

Each Unit Owner shall pay his proportionate share of the expenses of administration, maintenance and repair of the Common Elements and of any other expenses incurred in conformance with the Declaration and By Laws or otherwise lawfully agreed upon (which expenses are hereinafter sometimes referred to as "Common Expenses"); provided, however, the Board may establish another method for apportioning charges for services (including water and sewerage) furnished to individual Units if the same are charged to the Property as a whole and not billed separately to the Unit Owners by the utility or other persons furnishing the particular service. Such proportionate share of the Common Expenses for each Unit Owner shall be in the same ratio as his percentage of ownership in the Common Elements as set forth in Exhibit "D". Payment thereof shall be in such amounts and at such times as determined in the manner provided in the By Laws.

During Declarant's period of ownership of any unsold completed Units, Declarant shall only be responsible for his proportionate share of Common Expenses of the Units and the Common Elements for each of the completed Units, but shall not be responsible for the payment of any monthly sums for reconstruction, repair, replacement, alterations and improvements. Declarant shall be responsible for any operating deficits during the period of its control.

Each Unit Owner shall also pay for all utility services, including electricity and other utility services (including telephone), if any, separately metered for such Unit Owner's Unit. Each Unit Owner shall make such payments for separately metered utility services to the public utility company providing such utility service if provided directly to the Unit Owner or to the Association if such utility services are separately metered or submetered for the Units.

B. Lien.

The Association shall have a lien on a Condominium Unit for all unpaid sums assessed by the Association and interest

thereon at the legal rate. This lien shall also secure reasonable attorney's fees incurred by the Association incident to the collection of the assessment or enforcement of the lien.

The Board may bring an action at law against the Unit Owner personally obligated to pay the same, for collection of his unpaid proportionate share of the Common Expenses, or foreclose the lien against the Unit or Units owned by such Unit Owner, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Unit Owner, by his acceptance of a deed to a Unit, hereby expressly vests in the Board or its agents the right and power to bring all actions against such Unit Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens and each such Unit Owner hereby expressly grants to the Board a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Board and shall be for the common benefit of all Unit Owners. The Board acting on behalf of the Unit Owners shall have the power to bid upon an interest foreclosed at

foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

This lien shall be superior to all other liens and encumbrances on a Unit except (i) privileges, mortgages and encumbrances recorded before the recordation of this Declaration or recorded before the recordation of this lien, (ii) immovable property taxes and (iii) governmental assessments in which the Unit is specifically described. ■

8. SEPARATE MORTGAGES.

Each Unit Owner shall have the right, subject to the provisions herein, to make a separate mortgage or encumbrance on his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created any mortgage or encumbrance or other lien or privilege on or affecting the Property or any part thereof, except only to the extent of his Unit and his respective ownership interest in the Common Elements. ■

9. SEPARATE REAL ESTATE TAXES.

It is understood that real estate taxes are to be separately assessed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately assessed to each Unit Owner but are assessed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.



10. INSURANCE.

The insurance which shall be carried upon the Property shall be governed by the following provisions:

A. Authority to Purchase.

All insurance policies upon the Property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the Unit Owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of first mortgages on the Units or any of them; all policies of insurance must provide that the insurer waive its rights of subrogation as to any claims against Unit Owners, members of their households, the Association and their respective servants, agents and guests. Such policies and endorsements shall be deposited with the Insurance Trustee (hereinafter defined) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms thereof.

B. Unit Owners.

Each Unit Owner may obtain insurance, at his own

expense, affording coverage upon his personal property and for his personal liability and as may be required by law, but all such insurance shall contain the same waiver of subrogation as that referred to in the foregoing paragraph.

C. Coverage.

(1) Casualty. The Building and all other insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement cost thereof (exclusive of land, excavation, foundations and other items normally excluded from property policies) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against:

- a. loss of damage by fire and other hazards covered by the standard extended coverage endorsement;
- b. loss or damage by flood or other rising water to the fullest extent such coverage can be reasonably obtained;

c. such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Building, including by not limited to, vandalism, malicious mischief, windstorm and other damage.

(2) Comprehensive. Comprehensive general liability insurance, including medical payments insurance in an amount determined by the Board but not less than \$1,000,000, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

(3) Liability. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner.

(4) Workers' Compensation. The Board of Directors will also maintain appropriate Workers' Compensation Insurance.

(5) Other Insurance. If, at the time of a loss under a policy, there is other insurance in the name of a Unit Owner

covering the same property covered by a policy procured by the Association, the Association's policy must be primary insurance, not contributing with the other insurance.

D. Premiums.

Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as Common Expenses.

E. Insurance Trustee.

All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty losses shall be paid to a bank in New Orleans designated by the Association as the Insurance Trustee. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds.

The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes

elsewhere stated herein, and for the benefit of the Association, the Unit Owners and their respective mortgages, in the following shares, but such shares need not be set forth upon the records of the Insurance Trustee:

(1) Common Elements. Proceeds on account of damages to Common Elements: That undivided share for each Unit Owner and his mortgagee, if any, which is set forth in Exhibit “D”.

(2) Units. Proceeds on account of Units shall be held in the following undivided shares:

a. Partial destruction when the Building is to be restored: For the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each damaged Unit. Upon the request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate portions as aforesaid, and each Unit Owner shall be bound by and the Insurance Trustee may rely upon such certification;

b. Total destruction of the Building or where the

Building is not to be restored: For all Unit Owners, the share of each being that share set forth in Exhibit “D”.

- (3) Mortgages. In the event a mortgagee endorsement has been issued to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear.

F. Cancellation.

All such insurance policies required hereunder must provide that same may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Unit Owner and each mortgagee to whom certificates of insurance have been issued.

G. Distribution of Proceeds.

Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Unit Owners after first paying or making provision for the payment of the expense of the Insurance Trustee in the following manner:

- (1) Reconstruction or Repair. If the damage for which the

proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, all remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him.

- (2) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by him.
- (3) Certificate. In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the Unit Owners and their respective shares of the distribution.

Upon request of the Insurance Trustee, the Association
forthwith shall deliver such certificate.

H. Additional Insurance.

The Association shall not be responsible for obtaining insurance
on any additions, alterations, or improvements made by any Unit Owner
to his Unit. ■

11. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE.

A. General.

Any portion of the Condominium damaged or destroyed shall be repaired or replaced promptly by the Association unless:

- (1) this Declaration is terminated;
- (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- (3) 80% of the Unit Owners vote not to rebuild a unit which has been completely destroyed.

B. Cost.

The cost of repair and replacement in excess of insurance proceeds is a Common Expense.

C. Specifications.

Any such reconstruction or repair shall be substantially in accordance with the plans and specifications.

D. Encroachments.

Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Unit Owner upon whose property

such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Building stands.

E. Certificate.

The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

F. Partial Repairs.

If the entire Condominium is not repaired or replaced:

- (1) 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 Building; and
- (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Unit Owners of those Units and the Unit Owners of the Units to which those Limited Common

Elements were assigned; and

- (3) the remainder of the proceeds shall be distributed to all the Unit Owners in proportion to their Common Element interest. If the Unit Owners vote not to rebuild any Unit, that Unit's entire Common Element interest votes, in the Association and Common Expense liability, are automatically reallocated upon the vote to the remaining Units in proportion to the respective Common Element interests, voting power, and Common Expense liabilities of those Units prior to the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocation.

G. Responsibility.

If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner, under the supervision of the Association, shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be the sole responsibility of the Association.

- (1) Estimate of costs. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Association desires.
- (2) Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any), assessments shall be made against the Unit Owners who own the damaged property in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the Unit Owners who own the damaged property in sufficient amount to provide

funds for the payment of such costs.

(3) Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such cost in the following manner:

a. Association. If the amount of the estimated costs of reconstruction and repair exceeds the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the sums paid upon assessments to meet such costs shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

b. Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums

deposited with the Insurance Trustee by the Association from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

- (i) Unit Owner. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the Unit Owner. To such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the Unit Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Unit Owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of

the Unit Owner to make such reconstruction or repair.

(ii) Association – Lesser Damage. If the amount of the estimated costs of reconstruction and repair is less than the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

(iii) Association – Major Damage. If the amount of the estimated costs of reconstruction and

repair of the Building or other improvement is more than the total of the annual assessments for Common Expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs in the manner required by the Association and upon approval of a qualified architect employed by the Association to supervise the work.

- (iv) Surplus. It shall be presumed that the first money disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed jointly to the Unit Owners and their mortgagees who are the beneficial owners of the fund.

(v) When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the costs of repairing the Common Elements and the balance to the Units in the shares above stated.

(4) Insurance Adjustments. Each Unit Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one Unit, subject to the rights of mortgagees of such Unit Owners.

(5) Waiver of Claims. Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, the Declarant, the manager and managing agent of the Building, if any, and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, to the extent that such damage is caused by a

casualty for which insurance coverage is provided. ■

12. MAINTENANCE, REPAIRS AND REPLACEMENTS.

Each Unit Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit. Maintenance, repairs and replacements of the Common Elements and Limited Common Elements shall be furnished by the Board as part of the Common Expenses, subject to the rules and regulations of the Board.

The Board may cause to be discharged any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property or Common Elements, rather than against a particular Unit and its corresponding percentage of ownership in the Common Elements. When less than all the Unit Owners are responsible for the existence of such lien, the Unit Owners responsible shall be liable in solido for the amount necessary to discharge the same and for all costs and expenses (including attorney's fee) incurred by reason of such lien.

Whenever the Board shall determine, in its discretion, that any maintenance or repair of any Unit is necessary to protect the Common Elements or any other portion of the Building, the Board may cause a

written notice of the necessity for such maintenance or repair to be served upon such Unit Owner, which notice may be served by delivering a copy thereof to any occupant of such Unit, or by mailing the same by certified or registered mail addressed to the Unit Owner at the Unit. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance and repair to be performed at the expense of such Unit Owner.

If, due to the act or neglect of a Unit Owner, or of any of such Unit Owner's invitees, or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall be liable to pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Board, to the extent not covered by insurance.

The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this Section 12. All expenses which, pursuant to this Section 12, are chargeable to any Unit Owner, may be

specifically assessed to such Unit Owner and shall be payable by such
Unit Owner as prescribed by the Board. ■

13. ALTERATIONS, ADDITIONS, OR IMPROVEMENTS.

No alterations of any Common Elements, or any additions or improvements thereon, shall be made by any Unit Owner without the prior written approval of the Board. The Board may authorize and charge as Common Expenses (or in the case of Limited Common Elements, may charge to the Unit Owner(s) benefitted thereby) alterations and improvements of, and additions to, the Common Elements; provided, however, that in the event the costs thereof are to be charged as Common Expenses, the Board shall not approve such alterations, improvements, or additions requiring an expenditure in excess of \$10,000.00 without the approval of Unit Owners owning not less than 80% in the aggregate in interest of the undivided ownership of the Common Elements. Notwithstanding the provisions of the previous sentence, if the improvements shall cost in excess of 10% of the then-appraised value of the condominium, the improvements may be made only on the affirmative vote of not less than 90% of the Unit Owners, based on their percentage obligation for Common Expenses.

The Board may authorize and charge to the Unit Owners benefitted thereby the cost of alterations, improvements, or additions to

Limited Common Elements, provided that the Board must obtain the consent of not less than 50% (or, in the case of improvements affecting a single Unit Owner, the consent of that Unit Owner) of the Unit Owners benefitted thereby, based upon their aggregate percentage interest in those Limited Common Elements so improved.

Any Unit Owner may make alterations, additions, or improvements within his Unit without the prior written approval of the Board, provided same do not impair the structural integrity or mechanical systems, or lessen the support of any portion of the Building, but in any event such Unit Owner shall be responsible for any damage to other Units, the Common Elements, or the Property as a result of such alterations, additions, or improvements. ■

14. DECORATING.

Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including plumbing and electrical fixtures, painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps, and other furnishings and interior decorating. To the extent that the boundaries of any Unit, as shown on the annexed Plat, are the finished, undecorated interior surfaces of the perimeter walls, floors, and ceilings thereof, the Unit Owner of such Unit shall be entitled to the exclusive use of such surfaces, and such Unit Owner shall maintain such surfaces in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Board, and each Unit Owner shall have the right to decorate such surfaces from time to time in such manner as he may see fit and at his sole expense.

The use of and the covering of the interior surfaces of windows, other than by draperies, shades, or screens, shall be subject to the rules and regulations of the Board. Decorating of the Common Elements (other than interior surfaces within the Units as provided above), and

any redecorating of Units to the extent made necessary by any damage to the existing decoration of such Units caused by maintenance, repair, or replacement work on the Common Elements by the Board, shall be furnished by the Board as part of the Common Expense. ■

15. ENCROACHMENTS.

If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements or any other Units, as the Common Elements and Units are shown by the surveys comprising the Plat annexed hereto as Exhibit "B", there shall be deemed to be mutual servitudes in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of such encroachments so long as the same shall exist. ■

16. LEASE RESTRICTIONS OF A UNIT OWNER.

Any lease or rental agreement must be in writing and must be subject to the terms and conditions contained in the Declaration of Condominium Ownership and the By Laws of the Association. No Unit may be leased for less than thirty (30) days. ■

17. USE AND OCCUPANCY RESTRICTIONS.

No Unit shall be used for other than residential purposes consistent with the purpose for which the Property was designed.

The Common Elements shall be used only for access to and from, ingress to and egress from, the respective Units by the respective Unit Owners and their respective guests, employees, and other authorized visitors, and for such other purposes which are incidental to the use of the respective Units; provided, however, the common parking areas, storage areas, management office, and other special areas shall be used only for the purposes approved by the Board.

Without limiting the generality of the foregoing provisions of this Section 17, use of the Property by the Unit Owners shall be subject to the provisions set forth in Article VI of the By Laws of the Association.



18. REMEDIES.

In the event of any violation of the provisions of the Act, Declaration, By Laws, or rules and regulations of the Board or Association by any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit), the Association or its successors or assigns, or the Board or its agent, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, By Laws, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any item and the appointment of a receiver for the Unit and ownership interest in such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief.

All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the maximum lawful rate per annum until paid, shall be

charged to and assessed against such defaulting Unit Owner, and shall be added to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same, as well as for non-payment of his respective share of the Common Expense, upon the Unit and ownership interest in the Common Elements of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner, except for the amount of the proportionate share of said Common Expenses which become due and payable from and after the date on which said mortgage owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security), or files suit or commences other proceedings to foreclosure its mortgage or causes a receiver to be appointed.

This paragraph shall not be amended, changed, modified, or rescinded without the prior consent of all holders of record of mortgages against Units.

In the event of any such default by any Owner, the Board and the manager or Managing Agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to any other rights provided for in this Declaration:

- A. to enter upon the Unit, or any portion of the property upon which, or as to which such violation or breach exists, and to summarily abate and removed, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or

- B. to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or
- C. to take possession of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law. ■

19. AMENDMENT.

The provisions of this Declaration may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification, or rescission, approved by Unit Owners having at least eighty percent (80%) of the total vote, and certified by the secretary of the Board; provided, however, that all lien holders of record have been notified by certified mail of such change, modification, or rescission, and an affidavit by said secretary certifying to such mailing is a part of said instrument.

Any such changes must be approved by mortgage holders representing at least 51% of the votes of the Units which are subject to mortgages. If the Association received no objection from said mortgage holders within 30 days of notice, their consent to the amendments will be presumed.

However, so long as the Declarant owns any part of the Property subject to this Declaration, Declarant shall have the authority, without the joinder or consent of any party including specifically but not by way of limitation a Unit Owner or mortgagee of a Unit, to make any amendment of this Declaration necessary to clarify any apparently

conflicting provisions hereof; an/or any provisions hereof which may conflict with the Act and/or to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors.

Notwithstanding the provisions of the foregoing paragraph, if the Act, or this Declaration, or the By Laws require the consent or agreement of all Unit Owners or of all lien holders, or more than eighty percent (80%) but less than all Unit Owners or lien holders, for any action specified in the Act or in this Declaration, then any instrument changing, modifying, or rescinding any provision of this Declaration with respect to such action shall be approved by all of the Unit Owners or all lien holders, or more than eighty percent (80%) but less than all Unit Owners or lien holders, or both as required by the Act or this Declaration.

The change, modification, or rescission, whether accomplished under either of the provisions of the preceding two paragraphs, shall be effective upon recordation of such instrument in the office of the Registrar of Conveyances for the Parish of Jefferson, provided, however, that no provisions in this Declaration may be changed, modified, or rescinded so as to conflict with the provisions of the Act. ■

20. NOTICES.

Notices provided for in the Act, Declaration, or By Laws shall be in writing and shall be addressed to the Board, or any Unit Owner, as the case may be, at 3217 35th Street, Suite 204, Metairie, Louisiana, or at such other address as hereinafter provided. The Board may designate a different address for notices to it by giving written notice of such change of address to all Unit Owners at such time. Any Unit Owner may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Board. Notices addresses as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Unit is subject to such mortgage or trust deed. ■

21. SEVERABILITY.

If any provision of the Declaration or By Laws or any section, sentence, clause, phrase or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of the Declaration and By Laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby. ■

22. RIGHTS AND OBLIGATIONS.

Each grantee of Declarants by the acceptance of an act of conveyance, and each purchased under any sale contract, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Reference in the respective acts of conveyance, or in any mortgage or other evidence of obligation, to the rights described in this paragraph or described in any other part of this Declaration or the By Laws shall be sufficient to create and reserve such servitudes and rights to the respective grantees, mortgagees, and trustees of such Unit Ownerships as fully and completely as though such rights were recited fully and set forth in their entirety in such documents. ■

23. GENERAL PROVISIONS.

- A. Until such time as the Board provided for in this Declaration is formed, the Declarant shall exercise any of the powers, rights, duties, and functions of the Board.
- B. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
- C. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class condominium development.
- D. In the event that title to any Unit Ownership is conveyed to a title holding trust, under the terms of which all powers of management, operation, and control of the Unit Ownership remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens, or indebtedness, and for the performance of all agreements, covenants, and undertakings

chargeable or created under this Declaration against such Unit Ownership. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership, and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Unit Ownership.

- E. In the event of a resale of a Unit by a Unit Owner other than Declarant, the Unit Owner shall furnish to a purchaser before execution of any contract to purchase a Unit, or otherwise before conveyance, a copy of the Declaration, other than plats and plans, the Articles of Incorporation or documents creating the Association, the By Laws, and a certificate containing:
- (1) a statement setting forth the amount of any current Common Expense assessments;

- (2) a statement of any capital expenditures approved by the Association for the current and two next succeeding fiscal years;
- (3) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the Association for any specified projects;
- (4) the most recent balance sheet and income and expense statement of the Association, if any;
- (5) the current operating budget of the Association, if any;
- (6) a statement of any unsatisfied judgments against the Association, and the status of any pending suits to which the Association is a party;
- (7) a statement describing any insurance coverage provided by the Association;
- (8) a statement of the remaining term of any ground lease affecting the Building and provisions governing any extension or renewal thereof.

The Association, within ten (10) days after request by a Unit Owner, shall furnish a certificate containing the information

necessary to enable a Unit Owner to comply with this section. The Unit Owner providing a certificate pursuant to this section is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate. A Unit Owner is not liable to a purchaser for the failure or delay of the Association to provide the certificate in a timely manner; however, the contract to purchase is voidable by the purchaser until a certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs.

F. All provisions of the Act are incorporated herein by reference. ■

THUS DONE AND PASSED in my office in Metairie, Louisiana, on the day, month, and year hereinabove first written, in the presence of the undersigned competent witnesses and me, Notary, after reading of the whole.

WITNESSES:

BRIGNAC-DERBES, INC.

By: _____
Ronald L. Brignac, President

Kevin G. Heigle
Notary Public