

**DECLARATION AND MASTER DEED
THE ROSE TREE – A CONDOMINIUM**

THE ROSE TREE – A CONDOMINIUM, a joint adventure (hereinafter referred to as "Developer") does hereby make and execute this Declaration and Master Deed as of this _____ day of _____, 197____, pursuant to the provisions of the Texas Condominium Act, Article 1301a of the Texas Revised Civil Statutes (hereinafter referred to as the "Act"), for the purpose of submitting the hereinafter described real property and the improvements located thereon to a condominium regime.

WITNESSETH:

WHEREAS, Developer is the fee simple owner of the following described real property in the City of Houston, County of Harris, State of Texas, to-wit:

Lots Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11) and Twelve (12), Block One (1) WILDROSE GARDEN, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 30, Page 74 of the Map Records of Harris County, Texas,

consisting of four (4) residential buildings containing a total of sixty-four (64) units therein and certain other improvements located thereon (being hereinafter sometimes referred to as "The Rose Tree" or more properly named "THE ROSE TREE – A CONDOMINIUM" more particularly described on the condominium subdivision plan attached hereto as Exhibit "B" and made a part hereof for all purposes;

WHEREAS, Developer desires by recording this Declaration and Master Deed, together with the Condominium Bylaws attached hereto as Exhibit "A" and the condominium subdivision plan attached hereto as Exhibit "B" (both of which are hereby incorporated by reference and made a part hereof), to establish a Condominium Project known as THE ROSE TREE – A CONDOMINIUM under the provisions of the Act.

NOW, THEREFORE, Developer does upon the recording hereof establish THE ROSE TREE as a Condominium Project under the Act and does declare that THE ROSE TREE shall, after such establishment, be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved and in any other manner utilized, subject to the provisions of the Act and to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration and Master Deed and Exhibits "A" and "B" hereto, all of which shall be deemed to run with all or any portion of THE ROSE TREE and shall be a burden and benefit to Developer, THE ROSE TREE and any person acquiring or owning any interest in THE ROSE TREE, their grantees, heirs, executors, administrators, successors and assigns. In furtherance of the establishment of this condominium Project, it is provided as follows:

- A. "Property" means and includes the land whether leasehold or in fee simple and the buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto.
- B. "Building" includes the principal structures or structures erected or to be erected upon the land described in this Declaration and Master Deed which determines the use to be made of the improved land, whether or not such improvement is composed of one (1) or more separate buildings containing one or more floors or stories.
- C. "Condominium Project" shall mean and refer to THE ROSE TREE as a condominium project established in conformance with the provisions of the Act.
- D. "Condominium" shall mean and refer to the separate ownership of a unit, together with an undivided ownership interest in the limited and general common elements as set forth and defined herein.
- E. "Unit" shall mean and refer to an enclosed space consisting of one or more rooms occupying all or part of one or more floors in a building in the condominium project having direct access to a thoroughfare.
- F. "Owner" shall mean and refer to a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who or which is the record owner of fee simple title to one or more units in the Condominium Project.
- G. "Association" shall mean and refer to THE ROSE TREE – A CONDOMINIUM Homeowner's Association, Inc., its successors and assigns, a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act, of which all owners shall be members, which corporation shall administer the operation and management of the Condominium Project.
- H. "Common Elements" shall mean and refer to both the general and limited common elements as hereinafter described.
- I. The herein above defined words and phrases shall have the meaning assigned to them unless the context otherwise specifies or requires.

The Developer, in order to implement the Condominium Plan of Ownership for the above described property, improvements and prospective improvements, covenants and agrees that it hereby subdivides the above described property and all the improvements erected or to be erected thereon, vertically and horizontally into the following fee simple estates:

Sixty-four (64) parcels of real property, being the Units, hereinafter more particularly described and shown on Exhibit "B" attached hereto.

Each of said sixty-four (64) Units shall consist of: (1.) the interior surface of each bearing wall; (2.) the interior surface of the ceiling; (3.) the upper surface of the concrete subfloor; (4.) the interior surface (including all glass or glass substitutes) of the windows and doors set in bearing walls; (5.) the air space enclosed within the area described and delimited in (1.) through (4.) above; (6.) any and all walls, ceilings, floors, partitions and dividers wholly within such air space (but excluding any pipes, ducts, wires, cables, conduits, bearing beams or supports contained within such walls, ceilings, floors, partitions and dividers or within such air space; and (7.) all plumbing, heating, ventilating, air conditioning, lighting, cooking and other fixtures and equipment (exclusive of pipes, ducts, cables or conduits) located wholly or partly within such air space.

A separate fee simple estate in the remaining portions of all the lands and premises hereinabove described with all the improvements constructed or to be constructed thereon, including all appurtenances thereto, which said remaining portions shall be hereafter known and referred to as "general common elements"; save and except the sixty-four (64) Units contained in the said Buildings which are individually and separately owned. More specifically, the general common elements shall include, but not be limited to, the following:

- (1) The land in the Condominium Project, as more particularly described in Exhibit "B";
- (2) The foundations, bearing walls and columns (including any windows, doors or chimneys therein), roofs, attics, ceilings and floors, halls, lobbies or thoroughfares such as stairways, entrances, exits or communication ways and any other portion of the Buildings located on the land described above not included within any Unit;
- (3) The premises and facilities, if any, used for the common laundry, common storage, maintenance or repair of the Condominium Project.
- (4) The premises, if any, for the lodging of janitors or persons in charge of the Building.
- (5) All common recreational facilities, including without limitation, the clubhouse, a swimming pool, and the grounds, yards and walkways;
- (6) Compartments or installations for central services such as power, light, electricity, telephone, gas, cold and hot water, plumbing reservoirs, water tanks and pumps, incinerating and all similar devices and installations; and
- (7) All other elements desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Project.

The limited common elements being those common elements reserved for the use of specified Units to the exclusion of others, consisting of:

- (1) Covered parking spaces as described and numbered on the condominium subdivision plan attached hereto as Exhibit "B"; and
- (2) Patios and balconies as described on the condominium subdivision plan attached hereto as Exhibit "B" and appurtenant to such Unit.

Each owner shall bear the cost of maintenance, repair and replacement of the following items within such owner's Unit: interior surfaces of bearing walls, ceilings and floors (including carpeting, tile, wallpaper, paint or other covering); heating, ventilating, and air conditioning equipment; garbage disposals, ranges, refrigerators, dishwashers and any and all other appliances of any nature whatsoever; any "built-in" features; any decorative features, and any furniture and furnishings. Each owner shall bear the cost of maintenance, repair and replacement of all items within such owner's patio including air conditioning equipment. Each owner shall have the following easements to, through and over the general and limited common elements to the extent necessary for such owner's maintenance, repair and replacement.

- A. To paint, remove and replace any finish on the surface of any general or limited common elements appurtenant to his unit;
- B. To install, repair, maintain, remove and/or replace any plumbing, heating, cooling, lighting, cooking or other fixtures or equipment which is a part of his Unit or which would become a part thereof when installed in any bearing wall, floor, ceiling or roof; provided, however, such installation, repair, maintenance, removal and/or replacement shall not impair the structural integrity of the Building in which his Unit is located, nor shall it adversely affect any adjacent Unit, nor shall it alter the external appearance of the Building in which his Unit is located (unless the Association consents thereto); and
- C. To drive and remove nails, screws, bolts and the like into and from bearing walls, floors, ceilings and roof; provided, however, such action shall not impair the structural integrity of the Building in which his Unit is located, nor shall it adversely affect any adjacent Unit, nor shall it alter the external appearance of the Building in which his Unit is located (unless the Association consents thereto).

The cost of maintenance, repair and replacement of both general and limited common elements (except as to the extent such costs are borne by each owner as set forth above and in the Bylaws) shall be an expense of administration of the Condominium Project to be assessed in accordance with the condominium bylaws attached hereto as Exhibit "A". Additionally, the Homeowner's Association through its Directors will control the exterior appearance of all general and limited common elements and may establish rules and regulations to govern the appearance of same.

In the condominium subdivision plan attached hereto as Exhibit "B" the residential Buildings in the Condominium Project are lettered A through D and the Units located therein are assigned individual Unit numbers as set forth below. In determining dimensions and area, each enclosed space in a Unit shall be measured from interior finished unpainted surfaces of the bearing walls.

The percentage of value assigned to each Unit in the Condominium Project is set forth below and shall be determinative of the proportionate share of each respective owner in the proceeds and expenses of administration and the value of such owner's vote at meetings of the Association. There will only be one vote per Unit with each vote weighted as set forth hereinafter under "Percentage of Ownership". The total value of the Condominium Project is 100%.

Set forth below are:

- A. The letter of each Unit building and Unit number as it appears on the condominium subdivision plan attached hereto as Exhibit "B"; and
- B. The percentage of value assigned to each such unit.

<u>UNIT NO.</u>	<u>BUILDING LETTER</u>	<u>SQUARE FOOTAGE</u>	<u>PERCENTAGE OF OWNERSHIP</u>
1	A	885.36	2.26
2	A	885.36	2.26
3	A	433.71	1.10
4	A	433.71	1.10
5	A	611.66	1.56
6	A	611.66	1.56
7	A	885.36	2.26
8	A	885.36	2.26
9	A	885.36	2.26
10	A	885.36	2.26
11	A	611.66	1.56
12	A	611.66	1.56
13	A	433.71	1.10
14	A	433.71	1.10
15	A	885.36	2.26
16	A	885.36	2.26
17	B	433.71	1.10
18	B	433.71	1.10
19	B	611.66	1.56
20	B	611.66	1.56
21	B	885.36	2.26
22	B	885.36	2.26
23	B	433.71	1.10
24	B	433.71	1.10
25	B	433.71	1.10
26	B	433.71	1.10
27	B	885.36	2.26
28	B	885.36	2.26
29	B	611.66	1.56
30	B	611.66	1.56
31	B	433.71	1.10
32	B	433.71	1.10
33	C	611.66	1.56
34	C	611.66	1.56

35	C	885.36	2.26
36	C	885.36	2.26
37	C	433.71	1.10
38	C	433.71	1.10
39	C	611.66	1.56
40	C	611.66	1.56
41	C	611.66	1.56
42	C	611.66	1.56
43	C	433.71	1.10
44	C	433.71	1.10
45	C	885.36	2.26
46	C	885.36	2.26
47	C	611.66	1.56
48	C	611.66	1.56
49	D	433.71	1.10
50	D	433.71	1.10
51	D	611.66	1.56
52	D	611.66	1.56
53	D	611.66	1.56
54	D	611.66	1.56
55	D	433.71	1.10
56	D	433.71	1.10
57	D	433.71	1.10
58	D	433.71	1.10
59	D	611.66	1.56
60	D	611.66	1.56
61	D	611.66	1.56
62	D	611.66	1.56
63	D	433.71	1.10
64	D	433.71	1.10
		39,254.64 sq. ft.	100.00 %

The Association

The Condominium Project shall be administered, supervised and managed by THE ROSE TREE – A CONDOMINIUM Homeowners Association Inc., hereinafter called the "Association", a non-profit corporation of the State of Texas, which shall act by and on behalf of the owners of the Units in the Condominium Project, in accordance with this instrument, the Bylaws of the Association and in accordance with the Act, its supplements and amendments. The aforesaid Bylaws form an integral part of the plan of ownership herein described and this instrument shall be construed with the provisions of said Bylaws. Pursuant to the requirements of the Act, the Association is hereby designated as the administrator of the Condominium Project and the said Association is hereby vested with the rights, powers, privileges and duties necessary to and incidental to the proper administration of the Condominium Project, the same being more particularly set forth in the Bylaws of the Association attached hereto as Exhibit "A". The said Association shall also be empowered to exercise any of the rights, powers, privileges or duties which may, from time to time, be established by law or which may be delegated to it by the owners or co-owners of Units in the Condominium Project.

Anything to the contrary herein notwithstanding or in the Bylaws of the Association, the percentage of interest of each Unit appertaining to the common expenses, common receipts, common surplus, relating to the common elements within the Condominium Project, shall be allocated to and governed by the percentage allocable to such respective Unit according to the hereinbefore assigned allocation and each Unit's proportionate ownership in the Association and maintenance fees payable to the Association shall be determined from this allocation.

To further implement this plan of ownership, to make feasible the ownership and sale of Units in the condominium, to preserve the character of the community and to make possible the fulfillment of the purpose of cooperative living intended, the Developer, its successors and assigns, by reason of this Declaration and Master Deed, and all future owners of Units in the Condominium, by their acquisition of title thereto, covenant and agree as follows:

Ownership of Common Elements

- A The common elements shall be owned in common by all the owners of Units and others. The common elements shall remain undivided and no Unit owner or the Association shall by act or omission seek to abandon, partition, subdivide, encounter, sell or transfer the common elements except as otherwise provided by statute or by the Bylaws of the Association.

Ownership and Conveyance of Condominium Units

- B Each unit shall, for all purposes, constitute a separate parcel of real property which is owned in fee simple and which may be conveyed, devised, inherited, transferred or encumbered along with its allocated percentage of interest in the common elements, in the same manner as any other parcel of real property, independently of all other Units, subject to the provisions of this instrument, the Bylaws of the Association and the Condominium Act of the State of Texas. No part of any Unit shall be partitioned, subdivided, conveyed, devised, inherited, transferred or encumbered apart from the whole of said Unit and its correlative percentage of interest in its common elements.

Occupancy of Condominium Units

- C Each Condominium Unit shall be occupied and used by the respective Owner only as a private residential dwelling and for no other purposes. Only one family per unit will be permitted and no children are allowed over two and under eighteen in the poolside units (poolside units are defined as those twelve units fronting directly on the pool).

Easements and Encroachments

- D In the event that any portion of the common elements encroaches upon any Unit, or vice versa, or in the

event that any portion of one Unit encroaches upon another Unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that any one or more of the multi-unit buildings is partially or totally destroyed and is then rebuilt in substantially the same location, any portion of the common elements encroaches upon the Units, or vice versa, or any of the Units encroaches upon another Unit, a valid easement for such encroachment and for the maintenance thereof, so long as it stands, shall and does exist.

Location of Condominium Units

- E In interpreting any and all provisions of this instrument, the exhibits attached hereto or subsequent deeds and mortgages to individual Units, the actual location of the Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally or vertically from the proposed locations as indicated on Exhibit "B" attached hereto. To the extent that such minor variations in location do or shall exist, a valid easement therefor and for the maintenance thereof does and shall exist.

Utility Easements

- F A valid non-exclusive easement in favor of Developer, its successors and assigns, does and shall continue to exist throughout the common elements for the purpose of installation, maintenance, repair and replacement of all sewer, water, power and telephone lines, pipes, television cables, mains, conduits, wires, poles, transformers, water sprinklers and any and all other equipment or machinery necessary or incidental to the proper functioning of said project including exterior maintenance items, such as walkways and required painting.

Membership of Unit Owners in the Association

- G Every Owner or co-owner of a Unit shall automatically, upon becoming the owner of a Unit or Units, in this Condominium Project, be a member of the Association and shall remain a member of said Association until such time as his ownership of a Unit ceases for any reason, at which time his membership in said Association shall automatically cease. Other than as an incident to a lawful transfer of title to a Unit, membership in the Association shall be non-transferable and any attempted transfer shall be null and void.

Administration of Association

- H The administration of the Association shall be in accordance with the provisions of this Declaration and Master Deed, the bylaws and rules and regulations of the Association, as may from time to time be amended or promulgated, and the Condominium Act of the State of Texas.

Compliance with Bylaws and the Declaration and Master Deed

- I Each owner, tenant and occupant of a Unit, including the Developer, shall comply with the provisions of this Declaration and Master Deed and the Bylaws and Rules and Regulations of the Association and failure to comply therewith shall be grounds for an action by the Association through its Directors and /or by the individual Unit Owners or Co-owners, to recover sums due, damages, injunctive relief, reasonable attorney's fees and the discontinuance of the furnishing of any services to an Owner who is in default of any provisions herein including but not limited to his obligation to timely pay for electrical consumption. Written notice of default may be served upon the Owner and the defaulting Owner will be given 30 days to correct and/or cure said default before further action could be taken. No further notice is required except as may be required by law.

In addition to the above default and notice provisions, should Owners and/or Co-Owners violate the covenants contained in Paragraph C of this section regarding children, then upon ninety (90) days written notice to the defaulting Owner(s) and their Mortgagee, the Association through its Board may suspend all services and deny all general and limited common elements facilities until said default has been cured. The suspension of services and facilities will include: 1) access to and enjoyment of all general and limited common elements as it pertains to said defaulting Owners and/or those holding under them, and 2) the supplying of all utilities including but not limited to electricity, water and master T.V. antenna. It is specifically provided that the remedies herein prescribed shall not be exclusive and that the Association and/or the Mortgagee may exercise such other remedies as may be provided by law or contract including the right of the Mortgagee to foreclose its Deed of Trust for violation of this provision in this Declaration or any other provision herein.

Amendment or Revocation of this Declaration and Master Deed

- J This Declaration of Condominium may be amended or revoked in the following manner, as well as in the manner elsewhere provided:

(a) Resolution.

1. Proposal. A resolution for the adoption of an amendment or revocation may be proposed by either the Board or an aggregate number of Owners representing 10 per cent of the total Unit votes weighted in accordance with each Unit's respective interest in the Common Elements. Such resolution shall be considered at a regular meeting of the Board or a special meeting of the Board called for such purpose.

2. Notice. Notice of the subject matter of a proposed amendment or revocation shall be included in the notice of any meeting at which a proposed amendment or revocation is to be considered. Owners not present at the meeting or meetings considering such proposed amendment or revocation may express their vote in writing.

3. Approval. Except as elsewhere provided, an amendment or revocation of the Declaration considered at such a meeting or meetings must be approved by not less than an aggregate of Owners representing 75 per cent of the total vote of all Units weighted in accordance with their interest in the Common Elements and an aggregate of the holders of record of Mortgages on the Units representing 25 per cent of the total votes of all Units weighted in accordance with their respective interests in the Common Elements.

(b) Agreement.

Any proposed amendment or revocation may be approved by an instrument in writing by an aggregate number of Owners representing 75 per cent of the total votes of all Units weighted in accordance with their interests in the Common Elements and an aggregate number of the holders of record of Mortgages on the Units representing 25 per cent of the total vote of all Units weighted in accordance with their interest in the Common Elements, without the necessity of a meeting.

(c) By Developer.

If the number of rooms in a Developer-Owned Unit is changed, or the size and /or number of Developer-Owned Units is changed (whether as a result of a subdivision or combination of Developer-Owned Units or alteration of boundary walls between Developer-Owned Units, or otherwise) and the appurtenant percentage interest in the Common Elements is reapportioned as a result thereof, all in accordance with the terms hereof, then the Developer shall have the right to execute, or (on its request) to require the Board to execute, and record in the office of the County Clerk of Harris County, Texas, and elsewhere, if required by law, an amendment to this Declaration (together with such other documents as may be required to effectuate the same) reflecting such change in the number of rooms in a Developer-Owned Unit or in the size and/or number of Developer-Owned Units (whether as a result of said subdivision, combination, alteration or otherwise) and the reapportionment of the common interests resulting therefrom, all without the approval of the Board, the Unit Owners or the representative or representatives of holders of Mortgages.

The provisions of this Paragraph C, may not be amended or deleted, in whole or in part, without the consent of the Developer (so long as the Developer or its designee owns any Residential Unit).

(d) Proviso.

Provided, however, that no amendment shall discriminate against any Unit Owner nor against any Unit

or class or group of Units, unless the Unit Owners so affected shall consent; and no amendment shall change any Unit nor the share in the Common Elements appurtenant to it, unless the record Owner of the Unit concerned and all record owners of Mortgages thereon shall join in the execution of the amendment. Neither shall an amendment of this Declaration make any change in the section entitled "Insurance", unless the record owners of all Mortgages upon Units in the condominium shall join in the execution of the amendment.

(e) Execution and Recording.

No amendment or revocation shall be effective until recorded in the Office of the County Clerk of Harris County, Texas. The holders of Mortgages on Units may, at their election, designate a representative or representatives (not to exceed three in number) to act upon any and all amendments to this Declaration and if such representative or representatives are designated and written notice thereof is given to the Board by registered or certified mail addressed to the office of the Project, then any amendment to this Declaration shall require the approval in writing of said representative or a majority of said representatives. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the Officers of the Board and acknowledged as in the case of a deed.

**Contribution of Condominium Owners Toward Expenses
Administration, etc, of Common Elements and the Association**

- K The Owner or Co-owners of each Unit are bound to contribute prorata in the percentage of their ownership in the common elements, as hereinabove set out, toward the expenses of insurance, utilities, administration, maintenance, repair and replacement of the common elements. Expenses for administering and maintaining the Association and the common elements in such amount as shall from time to time be found by the Association to be necessary, including, but not limited to: expense for the operation, maintenance, repair or replacement of the recreational facilities, common buildings and grounds; costs of carrying out the duties and powers of the Association; compensation of Association employees; insurance premiums and expenses relating thereto; and other expenses of the Association set forth herein, or in the Bylaws of the Association or which may be designated by the Board of Directors of the Association as "common expenses", each Owner or Co-owner of each Unit is bound to contribute prorata to such expenses as designated proportionate to the ratio the total expenses bears to the total number of the Units owning interest in and administered by the Association at any given time, as more fully set out in the Bylaws of THE ROSE TREE - A CONDOMINIUM Homeowners Association, Inc. No Owner may exempt himself from contributing toward such expenses, either as an Owner or Co-Owner of a Unit in the Condominium Project or in the Association by waiving the use of or enjoyment of the common elements or the community or recreational facilities or by abandonment of the Unit owned by him.

Lien in Favor of the Association

- L All charges and expenses chargeable to any Unit including electrical consumption charged to the Association and/or Developer and submetered to the Unit Owners, shall constitute a lien against said Unit in favor of the Association, which lien shall be prior to all other liens except (1) assessment liens and charges for taxes past due and unpaid on the Unit, and (2) payments due under bona fide purchase money mortgage instruments, if any, duly recorded. The charges and expenses represented in the usual monthly maintenance charges shall become effective as a lien against each Unit on the first day of each calendar quarter. Additional or added assessment, charges and expenses, if any, chargeable to Units and not covered by the usual monthly maintenance charge, shall become effective as a lien against each Unit as of the date when the expense or charge giving rise to such additional or added assessment was incurred by the Association.

The Association may bring an action at law against the Owner or Co-Owner personally obligated to pay an assessment or foreclose the lien against the Unit or both, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner or Co-owner, by his acceptance of a deed to a Unit, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner or Co-owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil Statutes, and such Owner or Co-Owner hereby expressly grants to the Association a power of sale in connection with said lien, said power of sale and lien are to be evidenced by a Deed of Trust to the Association. The Association shall designate a trustee to post the required notices and conduct such foreclosure sale. The lien provided for in this section shall be in favor of the Association and shall be for the common benefit of all Owners and Co-owners. The title acquired by a purchaser following any such foreclosure sale or sheriff's judgment sale shall be subject to all the provisions of this instrument, the Bylaws, Rules and Regulations of the Association and the Act and, by so acquiring title to the Unit, said purchaser covenants and agrees to abide and be bound thereby.

A first mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by the individual Unit Mortgagor of any obligation of this Declaration and Master Deed or by Bylaws which is not cured within sixty (60) days.

Payment of Expenses out of Proceeds of sale

- M-N Upon the sale, conveyance or other lawful transfer of title to a Unit, all unpaid assessments, charges and expenses chargeable to the Unit shall first be paid out of the sales price or by the acquirer in preference to any other assessments or charges of whatever nature except (1) assessments, liens or charges for taxes past due and unpaid on the Unit, and (2) payments due under bona fide purchase money mortgage instruments, if any, duly recorded.

Liability of Purchaser for Assessments Due Association

- O The acquirer of title to a Unit shall be jointly and severally liable with his predecessor in title thereto for the amounts owing by the latter to the Association up to the time of the transfer of title, without prejudice to the acquirer's right to recover from his predecessor in title the amount paid by him as such joint debtor. The Association shall provide for the issuance of and issue to every acquirer, upon his request, a statement of such amount due and the acquirer's liability under this covenant shall be limited to the amount as set forth in said statement.

Use of Common Elements

- P Each Owner or Co-owner, tenant or guest of a Unit may use the common elements of the Condominium Project in accordance with the purpose for which they are intended, but such use shall not binder or encroach upon the lawful rights of the other owners or co-owners, tenants or guests of the Unit; provided, however, an owner can build improvements within any limited common element appurtenant solely to such owner's Unit, after Board approval.

Access to Condominium Units

- Q The Association shall have the irrevocable right, to be exercised by the Directors or manager of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of the common elements therein or accessible therefrom for making emergency repairs therein necessary to prevent damage to the common elements or to another Unit or Units.

Alterations to Units and Common Elements

- R The maintenance, operation, alteration, and improvements of the Common Elements shall be the responsibility of the parties as follows:

(a) Common Elements, Misc.

1. By the Association. The maintenance and operation of the Common Elements shall be the responsibility and the common expense of the Association.

2. Alteration and Improvement. There shall be no alteration or further improvement of Common Elements by the Association without prior approval in writing by the Owners of 70 per cent of the Unit votes weighted in accordance with their percentage interest in the Common Elements; provided, however, any alteration or improvement of the Common Elements having the approval in writing of a majority or more of such votes, but less than 70 per cent of such votes and which alteration or improvement does not interfere

with the rights of any Owners withholding their consent, may be done if the Owners who do not approve are relieved from the cost thereof. The share of any cost not assessed to non-consenting Owners shall be assessed to the consenting Owners in such proportion as their respective shares in the Common Elements owned by all of the consenting Owners. There shall be no change in the share and rights of an Owner in the Common Elements which are altered or further approved, whether or not any Owner or Co-Owners contribute to the cost thereof.

(b) Alterations of Residential Units and Common Elements Adjacent, Contiguous or Between Units.

1. General. Except as otherwise provided herein, neither an Owner nor the Association shall make any alterations of a Unit or remove any portion thereof, or make any additions thereto, or otherwise perform any work within a Unit, which would affect the Common Elements without first obtaining approval in writing of the Board or an Architectural Review Committee appointed by the Board for such purposes. Such alterations, removal, additions or other work may, by way of example, but without limitation, include, proposals to change electrical wiring or water or sewer piping, removing all or a portion of interior walls, moving built-in electrical or plumbing facilities, or attaching to or building on or in common walls items of a utilitarian or decorative nature which weigh in excess of fifty (50) pounds, or the like. A copy of plans for all such work shall be filed with the Board at or prior to the time of submitting request for such approval. In the case of plans submitted by a Unit Owner for any work which would affect the Common Elements, the Board shall approve or disapprove of said plans within thirty (30) days after receipt of such plans and the Owner's request for approval; and, in the absence of said approval, following the expiration of thirty days, said plans shall be deemed to have been approved by the Board.

2. Limitation. Neither an Owner nor the Association shall make or approve any alterations of a Unit or removal of any portion thereof, or any additions thereto, or perform or approve the performance of any other work to or within a Unit, which would jeopardize the safety or soundness of the building or impair any easement or the Common Elements of the Condominium Project.

3. Limited Common Elements. Nothing herein shall prevent the Unit Owners from making improvements to their limited common elements, only after a request therefore has been approved by the Board taking into consideration appearance and structural soundness, and at Owner's sole expense.

(c) Alterations by Developer.

1. At any time prior to January 1, 1980, the Developer shall have the right, at its option and sole cost and expense, without the vote or consent of the Board, other Owners or the representative or representatives of holders of Mortgages on Units, to (i) make alterations, additions, or improvements in, to and upon Residential Units owned by the Developer (hereinafter called "Developer-Owned Units" or "Developer-Owned Residential Units"), whether structural or nonstructural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-Owned Unit; (iii) change the size and/or number of Developer-Owned Units by subdividing one or more Developer-Owned Unit into two or more separate Residential Units, combining separate Developer-Owned Units (including those resulting from such subdivision or otherwise) into one or more Residential Units, altering the boundary walls between any Developer-Owned Units, or otherwise; and (iv) reapportion among the Developer-Owned Units affected by such change in size or number pursuant to the preceding clause (iii), their appurtenant interest in the Common Elements; provided, however, that the percentage interest in the Common Elements of any Units (other than Developer-Owned Units) shall not be changed by reason thereof unless the Owners and Mortgagees, if any, of such Units shall consent thereto and, provided further, that the Developer shall comply with all laws applicable thereto and shall agree to hold the Board and all other Unit Owners harmless from any liability arising therefrom.

2. The Developer shall also have the authority, at its sole option, cost and expense, to make improvements to the Common Elements without the prior consent of the Board, other Unit Owners or the representative or representatives of holders of Mortgages on Units. No Owner shall ever be assessed for any such changes or improvements done by the Developer pursuant to this provision.

3. In the event of any such alteration, combination or improvement, the Developer, at its sole cost and expense, shall file, subject to the provisions of Article J, Paragraph (c-e), any amendment to this Declaration necessary to reflect such change or improvement. The provisions of this Paragraph 3 may not be added to, amended or deleted without the prior written consent of the Developer.

Protection of Mortgagee

S Protection Provisions:

(a) Notice to Association. An owner who mortgages his Unit shall notify the Board of Directors of the Homeowner's Association giving the name and address of his mortgagee. The Board shall maintain such information in a book entitled "Mortgagees of Condominium Units".

(b) Notice of Default. See Paragraph 1, page L herein.

(c) Examination of Books. The Association shall permit first mortgagees to examine the books and records of the Association or Project during normal business hours, and to receive an annual audited financial statement within ninety days of close of fiscal year.

(d) Reserve Fund. The Association shall establish condominium dues or charges which shall include an adequate reserve fund for maintenance, repairs and replacement of common elements components that must be replaced on a periodic basis and fund the same by regular monthly payments rather than by extraordinary special assessments.

(e) Notice of Meetings. The Association shall furnish each first mortgagee upon request of such mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such mortgagee to attend such meetings, one such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.

(f) Notice of Damage or Destruction. The Association shall furnish the first mortgagees and FNMA c/o the lender timely written notice of any loss to, or taking of the common elements of the Condominium Project if such loss exceeds \$10,000, or damage to a Condominium Unit exceeds \$1,000.00.

(g) Notice of Condemnation or Eminent Domain. The Association shall furnish the first mortgagees and FNMA c/o the lender timely written notice of any condemnation, or eminent domain proceeding regarding all or any portion of a Unit or of the common elements and facilities. Lenders will have priority over owners on distributions of awards or settlements on same.

(h) Management Agreements. Any agreement for professional management of the condominium project, or any other contract providing for services by the Developer, must provide for termination by either party without cause or payment of a termination fee on thirty (30) days or less written notice and a maximum contract term of one year.

(i) Right to Partition. No unit may be partitioned or subdivided by the owner thereof without the prior written approval of at least the holder of the first mortgage lien on such unit and the Board of Directors of the Association.

(j) Claims for Unpaid Assessments. Any first mortgagee who obtains title to the unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall not be liable for such unit's unpaid dues or charges which accrued prior to the acquisition of title to such unit by the mortgagee.

(k) Taxes, Assessments and Charges. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual condominium units and not to the condominium project as a whole.

(l) Other Acts by Association Requiring Approval of First Mortgagees and Owners. Unless at

least 100% of the first mortgagees (based upon one vote for each first mortgage owned), and owners (other than the Developer) of the individual condominium units have given their prior written approval, the Association shall not be entitled to: (i) by act or omission, seek to abandon, partition, sub-divide, encumber, sell or transfer, the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause), (ii) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the units and/or common elements of the condominium project, (iii) by act or omission, seek to abandon or terminate the condominium project, (iv) change the prorata interest or obligations of any individual Condominium Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (2) determining the prorata share of ownership of each Condominium Unit in the common elements.

(n) No provision of the condominium constituent documents gives a Condominium Unit owner, or any other party, priority over any rights of first mortgagees of Condominium Units pursuant to their mortgages in the case of a distribution to Condominium Unit owners of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or common elements.

(m) This condominium project has been created and is existing in full compliance with the requirements of the condominium enabling statute (Texas Condominium Act, Article 1301a of the Texas Revised Civil Statutes as amended) and all other applicable laws.

Rental Restrictions of Units

T No owner shall have any right to lease his Unit, other than in accordance with the provisions of this section; however, these provisions do not apply to Developer nor to any Mortgagee. If owner desires to lease his Unit, he shall first give written notice to the Board, and shall include the written lease. Within fifteen days of receipt the Board shall approve or disapprove the proposed lease agreement. In the event of such disapproval, the Owner shall have no right to rent his Unit. The Association may resort to any remedies available to it, including a proceeding in forcible entry and detainer to enforce provisions of this section. The Board shall not unreasonably withhold its approval unless the proposed tenant has a poor credit rating, has received poor references, or if the Board determines that the security deposit required is not adequate to protect the interest of other Owners, including sufficient deposit to cover the portion of the Home Owners Association Fee attributable to such Unit.

Units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than 180 days, or (b) rental if the occupants of the Unit are provided customary hotel services. The lease must be in writing subject to the covenants, restrictions and conditions contained in this Declaration and Master Deed, the Bylaws and Rules and Regulations of the Association and the Act.

Notwithstanding any of the provisions hereinabove contained, the provisions of this paragraph shall not be applicable to the Developer, who is irrevocably authorized, permitted and empowered to sell, lease or rent Units to any purchaser or lessee approved by it upon such terms and conditions as it determines are acceptable to it, and specifically it may sell, lease or rent Units without procuring the consent of the Association, Board or any Co-Owners. The Developer shall have the right to transact any business on the Property necessary to consummate sales of Units, including, but not limited to, the right to maintain models and offices in unsold Units or leased Units, having signs identifying parcels, maintaining employees in its offices, use of Common Elements on the condominium Property, and to show Units for sale. Any furniture and furnishings in any Unit or offices or the model apartments, signs and other items owned by Developer and used in the sales program shall not be considered Common Elements and shall remain the property of the Developer. In the event there are unsold Units, Developer's right as the owner of said unsold Units shall be the same as all other Unit Co-Owners in said condominium Property, and, Developer, as the owner of Units, shall contribute to the common expenses in the same manner as other Co-Owners, and shall have a vote in the Association for each unsold Unit weighted in accordance with the interest of those Units in the Common Elements.

Taxes, Assessments and Charges

U Taxes, assessments and other charges of the State of Texas, or of any political subdivision, or of any special improvement district, or any other taxing or assessing authority, shall be assessed against and collected on each individual Unit and its percentage of the common elements and not on the Condominium Project as a whole. The valuation of common elements shall be assessed separately to each owner in accordance with his fraction or percentage of ownership. All assessments, suits and sales shall be of individual units and its percentage or fractional common elements.

Insurance

V The Association shall carry a master policy of fire and extended coverage, vandalism and malicious mischief and liability insurance, and, if required by law, workmen's compensation insurance (hereinafter referred to as the "Master Policy"), with respect to the Condominium Project and the Association's administration thereof in accordance with the following provisions:

The Master Policy shall be purchased by the Association for the benefit of the Association, the owners and their mortgagees as their interests may appear (subject to the provisions of the Bylaws, the Declaration and Master Deed and the Act), and provision shall be made for the issuance of appropriate mortgagee endorsements to the mortgagees of the owners. The owners shall obtain insurance coverage upon their personal property at their own expense. The association and the owners shall use their best efforts to see that all property and liability insurance carried by an owner or the Association shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against the owners or the Association and the respective tenants, servants, agents and guests of the owner or the Association as the case may be.

All building, improvements, personal property and other common elements of the Condominium Project shall be insured against fire and other perils covered by a standard extended coverage endorsement in an amount equal to the maximum insurable replacement value thereof, excluding the cost of excavations, foundations and footings, as determined annually by the Board of Directors of the Association. The Association may, in its sole discretion, elect to carry insurance to cover such other perils as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use. The Association shall use its best efforts to see that the liability insurance carried by the Association shall contain, if available, cross-liability endorsements or appropriate provisions for the benefit of the owners, individually and as a group, the members of the Board of Directors and the management company, if any, insuring each insured against liability to each other insured.

The Association shall carry a comprehensive policy of public liability insurance covering all of the common areas in the Condominium Project, with a Severability of Interest Endorsement or equivalent coverage which would preclude the insurance company from denying the claim of a Unit Owner because of the negligent acts of the Association or another Owner, with Units not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

All premiums upon insurance purchased by the Association pursuant to the bylaws and the Declaration and Master Deed shall be included in the Association's budget except that the amount of increase over such premiums occasioned by the use, or misuse, occupancy or abandonment of a Unit or the Common Elements by an owner shall be assessed only against such owner.

Proceeds of all insurance policies owned by the Association shall be received by the Association as Trustees held in a separate account and distributed to the Association, the owners and their mortgagees (subject to the provisions of the Declaration and Master Deed, the Bylaws and the Act) as their interests may appear; provided, however, whenever repair or reconstruction of the Condominium Project shall be required as provided in the Association as a result of any loss requiring repair or reconstruction under the Declaration and Master Deed and the bylaws shall be applied to such repair or reconstruction.

Each owner, by ownership of a Unit in the Condominium Project, shall be deemed to appoint the Association as his true and lawful attorney-in-fact in connection with all matters concerning the maintenance of the Master Policy. Without limiting the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds and to distribute the same to the Association, the Owners and their mortgagees (subject to the provisions of the Declaration and Master Deed, the Bylaws and the Act) as their interest may appear, to execute releases of liability and to execute all documents and do all things on behalf of such owner

and the Condominium Project as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit nor the liability of any Owner for occurrences therein not caused by or connected with the Association's operation, maintenance or use of the Condominium Project.

Any insurance obtained pursuant to this Declaration shall be subject to the following provisions and limitations:

- (a) Insurance coverage obtained and maintained pursuant to the requirements of this Declaration shall not be brought into contribution with insurance purchased by the Owners of the Condominium Units or their mortgagees;
- (b) Such policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of the Owners of Condominium Units when such act or neglect is not within the control of the Association, or (ii) by failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control;
- (c) All policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to any and all insureds named thereon, including all first mortgagees; and
- (d) All such policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Condominium Unit and/or their respective agents, employees or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

Termination of Mechanic's or Materialmen's Liens and Indemnification.

- W Subsequent to the completion of the improvements described on the map, no labor performed or materials furnished and incorporated in a unit with the consent or at the request of the owner thereof or his agent or his contractor or subcontractor shall be the basis for filing of a lien against the general or limited common elements owned by such other owners. Each owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the unit or any other owner or against the general or limited common elements for construction performed or for labor, materials, services or other products incorporated in the owner's unit at such owner's request.
- X The invalidity of any provision of this Declaration and Master Deed shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and Master Deed and, in such event, all the provisions of the Declaration and Master Deed shall continue in full force and effect as if such invalid provision had never been included herein.

Waiver of Provisions

- Y No Provision contained in the Declaration and Master Deed 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.

IN WITNESS WHEREOF, Developer has caused this Declaration and Master Deed to be executed this _____ day of _____, 1978.

"DEVELOPER"

THE ROSE TREE - A CONDOMINIUM, a joint adventure of John S. Tuschman and Somerset Investments, Inc.

By _____
JOHN S. TUSCHMAN,
Co-adventurer

SOMERSET INVESTMENTS, INC.

By _____
Its President

STATE OF TEXAS *
COUNTY OF HARRIS *

BEFORE ME, the undersigned Authority, a Notary Public in and for said county and state, on this day personally appeared JOHN S. TUSCHMAN, Co-adventurer of THE ROSE TREE - A CONDOMINIUM, a joint adventure of John S. Tuschman and Somerset Investments, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said joint adventure.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 1978.

NOTARY PUBLIC IN AND FOR HARRIS COUNTY, TEXAS

STATE OF PENNSYLVANIA *
COUNTY OF _____ *

BEFORE ME, the undersigned Authority, a Notary Public in and for said county and state, on this day personally appeared _____, President of SOMERSET INVESTMENTS, INC., Co-adventurer of THE ROSE TREE - A CONDOMINIUM, a joint adventure of John S. Tuschman and Somerset Investments, Inc., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation, in the capacity therein stated and as the act and deed of said joint adventure.

NOTARY PUBLIC IN AND FOR _____ COUNTY,
PENNSYLVANIA