

## **Declaration of Garages of Texas @ Katy, a Condominium**

This Declaration (the "Declaration") is made in the County of Fort Bend, State of Texas, on the Effective Date (defined on the signature page hereof), by Katy Garages LP, a Texas limited partnership (the "Declarant"), pursuant to the provisions of Chapter 82 of the Texas Property Code for the purpose of creating the Garages of Texas @ Katy Condominium, as a condominium under the Act.

**WHEREAS**, Declarant is the owner of certain real property located in Fort Bend County, Texas, legally described in Exhibit B attached hereto and made, and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act as a condominium, and

**WHEREAS**, Declarant also owns or has the right to acquire, and to add to the Property, the real property legally described in Exhibit C attached hereto (the "Additional Real Estate"), and

**WHEREAS**, Declarant may, at Declarant's sole discretion, use the Additional Real Estate for uses different from but compatible with the Property; and

**WHEREAS**, Declarant desires to establish on the Property, and any Additional Real Estate added thereto, a plan for a non-residential development, to be owned, occupied and operated for the use, health, safety and welfare of the Owners and Tenants of the Property, and for the purpose of preserving the value, quality and character of the Property.

**THEREFORE**, Declarant subjects the Property to this Declaration under the name "Garages of Texas @ Katy Condominium", consisting of the Units referred to in Section 2, and declares that this Declaration shall constitute covenants to run with the Property, and that the Property and any real estate added thereto shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns, subject to the Permitted Exceptions as shown on Exhibit F, and subject to Declarant's reservation of, and Declarant does hereby reserve, the right to exercise the Special Declarant Rights (including the Development Rights) set forth in the Section 14 hereof.

### **SECTION 1 DEFINITIONS**

The following words when used in the Dedicatory Instruments shall have the following meanings (unless the context indicates otherwise):

"Act" means Chapter 82 of the Texas Property Code as amended.

"Additional Real Estate" means the real property legally described in Exhibit C attached hereto, including any improvement located thereon now or in the future, and all easements and

rights appurtenant thereto, which property Declarant has the exclusive right to add condominiums.

"Allocated Interest" means the undivided interest in the Common Elements, the Common Expense liability, and votes in the Association allocated to each Unit in Section 4.2.

"Assessments" means and refers to all assessments levied by the Association pursuant to Section 6 of this Declaration.

"Association" means Garages of Texas @ Katy Condominium Association, Inc., a nonprofit corporation created pursuant to the provisions of Chapter 22 of the Texas Business Organizations Code, whose members consist of all Owners.

"Board" means the Board of Directors of the Association, as provided for in the Bylaws.

"Building" means each building identified on the Plat which is or becomes a part of the Property and contains a Unit or Units.

"Bylaws" means the Bylaws governing the operation of the Association, as amended from time to time.

"Certificate of Formation" means the Association's certificate of formation.

"City" means the City of Katy, Texas.

"Common Elements" means all parts of the Property including any improvement thereon, except the Units.

"Common Expenses" means all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including Assessments and items otherwise identified as Common Expenses in the Declaration or Bylaws.

"Declarant Control Period" means the time period during which Declarant has the exclusive right to appoint the members of the Board, as described in Section 14.7 of this Declaration.

"Dedictory Instruments" means this Declaration and the Certificate of Formation, Bylaws, and Rules as amended from time to time.

"Demising Wall" means a solid wall (without any aperture) that is built (or is to be built) within an entire General Common Element Space between two adjacent Units.

"Effective Date" means the date on which Declarant executes this Declaration as indicated on the signature page hereof.

"General Common Elements" means common elements that are not Limited Common Elements.

“General Common Element Space” means each space between a Unit and adjacent Units, (i) the centerline of which is the dividing line between the adjacent Units as shown on the Plat and the Plan, (ii) whose width is the width of a typical wall built between non-residential condominium units, from the face of the wallboard on one side of such wall to the face of the wallboard on the other side of such wall, and (iii) whose length is equal to the distance between the walls which intersect the such wall thereby separating the Unit from the adjacent Units (i.e., not interior partition walls within the Unit) as shown on the Plat and Plan, (iv) whose bottom plane is the same elevation as the top surface of the concrete floor of the adjacent Units (i.e., not including floor coverings, if any), and (v) whose height is from the bottom plane of the Unit to upward to the wallboard surface of the bottom of the structural portion of the ceiling of the Unit.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, association, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Governmental Permits” means all certificates, licenses, zoning variances, building permits and no action letters from the City of Katy, Texas, or any other Governmental Authority required to evidence full compliance by each Owner and the Property, and conformance of Owner constructed improvements, with all Legal Requirements applicable to the Property.

“Governmental Requirements” means (a) any and all present and future judicial decisions, laws, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to the Property, including, without limiting the generality of the foregoing, the International Building Code, the standards established by the National Fire Protection Association relating to the ownership, use, occupancy, possession, construction, operation, maintenance, alteration, repair, or reconstruction thereof, and (b) any and all valid and enforceable covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in anyway or are applicable to the Property or the ownership, use, or occupancy thereof.

“Legal Requirements” means any law, ordinance, order, rule or regulation of a Governmental Authority or as might be imposed or subsisting pursuant to a Governmental Requirement, and any other requirements, terms or conditions contained in any restriction or restrictive covenant valid and subsisting and affecting the Property.

“Limited Common Elements” means a portion of the Common Elements allocated by the Declaration or by operation of Section 82.052 of the Act for the exclusive use of one or more but fewer than all of the Units.

“Member” means all persons who are members of the Association by reason of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Dedicatory Instruments.

“Mortgagee” means any Person owning a mortgage recorded against a Unit, which

mortgage constitutes a first mortgage lien against the Unit.

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"Owner" means a Person who owns a Unit, but excluding contract for deed vendors, mortgagees, holders of remainder or reversionary interests and other, secured parties within the meaning of the Act.

“Person” means a natural individual, corporation, limited liability company, partnership, limited liability partnership, trustee, or other legal entity capable of holding title to real property but specifically excludes clubs, lodges or associations of persons who have organized for a common purpose.

“Plan” means the architectural plans and drawings for each Building recorded with this Declaration as Exhibit E, and any amendment to the Plan made in accordance with this Declaration.

"Plat" means the Plat for the Condominium recorded with this Declaration as Exhibit D, showing the perimeter boundaries of the Property, the location of the Buildings in relation to the Property boundaries, and the perimeter boundaries of the Units within each Building, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Property" means all of the real property subjected to this Declaration, now or in the future, including all structures and any other improvement located thereon. The Property is legally described in Exhibit B attached hereto.

"Related Facilities" has the meaning ascribed in Section 4.5 of this Declaration.

"Rules" means the rules, regulations, policies and procedures related to the Condominium as are adopted by the Board, from time to time, that do not conflict with law or the Dedicatory Instruments. On request, an Owner will be provided a copy of the Rules.

"Social Members" has the meaning ascribed in Section 4.5 of this Declaration.

"Social Memberships" has the meaning ascribed in Section 4.5 of this Declaration.

“Special Declarant Rights” means rights or combination of rights reserved by Declarant set forth in Section 14.

"Tenant" means any Person or Persons, other than an Owner, occupying or using a Unit.

"Unit" means a part of the Property, other than the Common Elements, including one or more rooms or enclosed spaces, occupying all or part of one or more floors of a Building, designed and intended for separate ownership and use, as described in Section 2 and shown on the Plat.

Any terms used in the Dedicatory Instruments and defined in the Act and not in this Section, shall have the meaning set forth in the Act. References to Section numbers refer to the Sections of this Declaration unless otherwise indicated. References to the singular may refer to the plural, and conversely, depending upon context.

## SECTION 2 DESCRIPTION OF UNITS, BOUNDARIES AND RELATED EASEMENTS

2.1 Units. There are 73 Units, as shown on the Plat, subject to the right of Declarant to add additional Units if applicable, or subdivide, combine or convert Units, as provided in Section 15. The Units shall be used exclusively for non-residential purposes, including vehicle, motorsports and other business storage. Each Unit constitutes a separate parcel of real estate. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference. A Schedule of the Units is set forth in Exhibit A. The expression of square footage of each Unit on the Plat and the Plan may not be precise or exact and should be considered an approximated expression. The exact square footage of each Unit, as compared to the expression of square footage identified on the Plat and the Plan, shall not be used as basis to dispute the validity of any deed or deed of trust of such Unit, nor shall it be used to redefine the boundaries of the "Unit" as described below, nor shall it be used as a basis to dispute the Unit's Allocated Interest in Common Elements and in Common Expenses or to dispute any Assessment. Each Unit is identified by a letter and number, with the exact location of each shown on the Plat and the Plan. Each Unit has in common vehicular and pedestrian access through the Condominium directly to FM 1463, either directly or through a recorded easement.

2.2 Unit Boundaries. The boundaries of each Unit are as follows:

- (i) the lower boundary is the horizontal plane at the top of the concrete floor within the Unit; and
- (ii) the upper boundary is the horizontal plane at the bottom surface of the wallboard of the ceiling of the Unit, or if there is no wallboard, the horizontal plane that is consistent with the lowest structural element of the roof and ceiling; and
- (iii) the lateral boundaries are the planes located on each side of a Unit, as shown on the Plat, perpendicular to the lower and upper horizontal planes, from the lower boundary of the Unit to the upper boundary of the Unit. The lateral boundaries of each Unit are located as shown on the Plat and the Plan, as if Demising Walls are constructed within each General Common Element Space bounding the Unit.

Included within each Unit shall be the airspace and all other fixtures and improvements lying within the boundaries of such Unit. As such, the boundary of each Unit shall be measured to the applicable lateral, upper and lower planes of the Unit. All portions of the Demising Walls located within the General Common Element Space between two adjacent Units, and all portions of floors below the lower boundary and of the ceiling above the top boundary of the Unit are part of the Common Elements.

If two adjacent Units do not contain one or more Demising Walls within the General

Common Element Spaces between the Units at the time Declarant first sells the Unit, it is because the Declarant has approved plans and specifications for the Units that have deleted or removed the missing Demising Wall(s) prior to the construction of such Units. In any such circumstance, the prospective purchaser of such Units, at its sole cost and expense by reimbursing Declarant, is obligated to install or pay for the installation of structural columns and beams, and for making such other structural modifications, as a structural engineer retained by Declarant recommends in order to properly support the Common Elements affected by there not being a Demising Wall in such location(s).

If the Owner of two or more adjacent Units wishes in the future to remove a Demising Wall, or to create openings in the Demising Wall, such Owner must first obtain the Board's approval for such removal or openings after (1) delivering plans and specifications for the removal and/or construction of the openings and (2) agreeing, at such Owner's sole cost and expense, to install structural columns and beams, and to make such other structural modifications, as the Board requires after consulting with a structural engineer (at such Owner's sole cost and expense) in order to properly support the Common Elements affected by removal of or openings in the Demising Wall(s).

Any Owner who owns adjacent Units described herein without Demising Walls between them (whether it is due to them being deleted before construction or removed after construction) will, notwithstanding that the space is a single, open and homogeneous premises without Demising Walls between the Units, own the entire area as separate Units, not as a single larger Unit, and each such Unit as shown on the Plat and Plan will be allocated its Allocated Interests in Common Elements, Common Expenses and voting as set forth in Section 4.2 and on Exhibit A. Any load bearing portions of any interior or perimeter walls, columns, ceilings or floors, and any common utility lines or other common facilities located in or passing through a Unit, shall be Common Elements. Subject to this Section and Section 3, all spaces, interior partitions, and interior fixtures and any improvement located within the boundaries of a Unit are a part of the Unit.

2.3 Appurtenant Easements. The Units shall be subject to and benefited by the easements described in Section 12.

2.4 Ownership. A Unit will be a fee simple estate and may be held and owned by any person, firm, corporation, or other entity singularly, as joint tenants, as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Texas. Each Owner is allocated an undivided interest in the Common Elements, referred to herein as the Allocated Interest in the Common Elements, in accordance with Section 4.2 below and Exhibit A. Each Unit and its corresponding Allocated Interest appurtenant thereto shall be inseparable and may not be conveyed, leased, or encumbered separately, and shall at all times remain indivisible. Each Owner shall have a right to use easements and any Common Elements in accordance with this Declaration. Subject to the Rules, the Owner of each Unit (including unsold Units owned by Declarant) shall have an unrestricted right of ingress and egress to such Owner's Unit, subject to reasonable routes of such vehicular and pedestrian access; shall be entitled to exclusive ownership and possession of the Unit; and may use the General Common Elements in accordance with the purposes for which they are intended and without hindering or encroaching upon the lawful rights of the other Owners.

**SECTION 3**  
**COMMON ELEMENTS, LIMITED COMMON ELEMENTS AND OTHER PROPERTY**

3.1 Common Elements. The Common Elements and their characteristics are as follows:

3.1.1 All of the Property not included within the Unit boundaries as depicted and dimensioned on the Plat and the Plan and any load bearing portions of any interior or perimeter exterior walls, columns, ceilings or floors; and any common utility lines or other common facilities located in or passing through a Unit shall be Common Elements. The Common Elements include, but are not limited to, all areas and items listed in this Section 3, and those parts of the Property designated as Common Elements on the Plat or in the Act.

3.1.2 The Common Elements shall be subject to (i) the easements described in this Declaration and any other easements recorded against the Common Elements; (ii) the rights of Owners and Tenants in any Limited Common Elements allocated to their respective Units; and (iii) the right of the Association to establish reasonable Rules governing the use of the Property.

3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Tenants of the Units to which they are allocated. The rights to the use and enjoyment of the Limited Common Elements are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units, as follows:

3.2.1 Those items (except as noted in 3.2.4 below) or areas designated as Limited Common Elements on the Plat or Plan are allocated to the Units indicated thereon.

3.2.2 Improvements, if any, such as loading dock platforms, built-in vehicle lifts, decks, balconies, awnings, exterior windows and doors, driveways, walks, walkways or entryways constructed as part of the original construction to serve a single Unit or Units, and replacements and modifications thereof authorized pursuant to Section 8, located wholly or partially outside the Unit boundaries, are allocated to the Unit or Units which they serve.

3.2.3 Chutes, flues, ducts, drains, pipes, wires, conduit, fire suppression sprinkler heads or other utility installations, bearing walls, bearing columns, the structural concrete floor within a Unit, the HVAC equipment for a Unit, a mounting pad for HVAC equipment (as well as, if a Unit owner elects to install the ducts conduit from the HVAC equipment to the Unit), awnings, doorsteps, bollards at or near a Unit garage door, exterior doors (garage door and entry doors) and windows, or any other components or fixtures located wholly or partially outside the Unit boundaries, and serving only that Unit or Units, are allocated to the Unit or Units they serve. Any portion of such

installations serving or affecting the function of the Common Elements is a part of the Common Elements.

3.2.4 Heating, ventilating, air conditioning, plumbing, electrical, fire suppression or mechanical equipment serving only a certain Unit or Units and located wholly or partially outside the Unit boundaries is allocated to the Unit or Units served by such equipment. Air conditioning condenser units that serve more than a single Unit may be located on a Limited Common Element balcony assigned to, or on the roof of, a particular Unit.

3.2.5 The fire suppression room which services all of the Units shall be proportionately allocated, based upon a Unit's Allocated Interest in Common Elements.

3.3 Annexation of Other Property. In addition to the Additional Real Estate, Declarant may add other property to this Condominium in accordance with Section 82.060 of the Act through the exercise of the Special Declarant Rights reserved in Section 14.

#### **SECTION 4 ASSOCIATION MEMBERSHIP AND GUEST PRIVILEGES: RIGHTS, ALLOCATED INTERESTS AND OBLIGATIONS**

Membership in the Association, the allocation to each Unit of a portion of the votes in the Association, and the allocation of to each Unit of a portion of the Common Expenses of the Association the Common Elements, shall be governed by the following provisions.

4.1 Membership. Each Owner shall be a member of the Association solely by reason of owning a Unit, and the membership shall be transferred with the conveyance of the Owner's interest in the Unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be members of the Association, but multiple ownership of a Unit shall not alter the voting rights allocated to such Unit nor authorize the division of the voting rights.

4.2 Allocation of Voting Rights, Undivided Interests and Common Expense Obligations. The Owners' respective undivided interest in the Common Elements and in the Common Expense liability, and the Owners' respective votes in the Association, are allocated to each Unit as set forth in Exhibit A ("Allocated Interest"). The Allocated Interest of each Unit has been calculated as follows:

4.2.1 Allocated Interest in Common Elements and in Common Expenses. At the time of recording of this Declaration the Allocated Interest assigned to each of the initial seventy three (73) Units within the Condominium is 1.369863%, or one-seventy third (1/73) of the whole, as reflected in Exhibit A. The Allocated Interest of each Unit as so expressed includes the value of the Unit and the value of the percentage interest of each such Unit in the Common Elements and in the Common Expense liability.

The Allocated Interest assigned to each Unit is based on relative values to establish the Allocated Interests required by the Act, and is determined on the basis that,

while the Units vary in size to some degree, the expense of each Unit with respect to the whole of the Units and the Condominium is deemed to be relatively equal to that of every other Unit. Accordingly, each Unit is assigned an identical amount of Allocated Interest in the Common Elements and of Allocated Interest in the Common Expenses. The aggregate of the Allocated Interests in the Common Elements and of the Allocated Interests in the Common Expenses assigned to all Units in the Condominium totals one hundred percent (100%).

4.2.2 Votes in the Association. One vote in the Association is allocated to each Unit. If a Unit is owned by more than one person, the Owners who own fractional interests in the Unit aggregating more than 50% of the whole ownership thereof shall appoint one Owner who shall be entitled to exercise the votes pertaining to that Unit at any meeting of the Members of the Association. Such designation shall be made in writing to the Board of Directors and shall be revocable at any time by actual notice to the Board or upon the death or judicially declared incompetence of any one of the Owners of that Unit. If a Unit is owned by more than one Member claiming to be entitled to exercise the voting right attributable to that Unit, then none of such Members shall be allowed to exercise the voting rights attributable to such Unit unless a majority of the Owners of the Unit concur upon the manner in which such votes will be cast. Failure of such Owners to concur shall result in that Unit being excluded in all respects in determining whether a requisite number of votes has been cast with respect to the matter upon which the vote is being taken. All Members of the Association may be present at any meeting of the Members and may act at such meetings in person or by proxy (whether physically present or not). If at any time the Association holds legal title to one or more Units, the voting rights to which the Owner thereof otherwise would be entitled shall be exercised as directed by a majority vote of the Owners in attendance at the meeting, in person or by proxy.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights, Common Expense obligations and undivided interests described in Section 4.2. Said rights, interests and obligations, and the title to the Units, shall not be separated or conveyed separately, and any conveyance, encumbrance, judicial sale or other transfer of any allocated interest in a Unit, separate from the title to the Unit shall be void. The allocation of the rights, interests and obligations described in this Section may not be changed, except in accordance with the Dedicatory Instruments and the Act.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association. However, if there are multiple Owners of a Unit, only the Owner or other person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 4.2.2 above.

4.5 Guest Privileges. The Board may, at its discretion, establish guest privileges ("Social Memberships") for approved non-Owner applicants ("Social Members") and enter into reciprocity agreements with other owners' associations of similar common interest communities established by the Declarant or its affiliates ("Related Facilities"), subject to the following terms,

conditions and limitations:

4.5.1 Social Members and persons having guest privileges pursuant to a reciprocity agreement shall not be Members within the meaning of Member as set forth in Section 1 of this Declaration.

4.5.2 Social Members and persons having guest privileges pursuant to a reciprocity agreement shall be entitled access to the Clubhouse, other Common Elements and Member events on such terms as the Board deems advisable, in its discretion.

4.5.3 Reciprocity agreements may grant guest privileges at Related Facilities to Members and may grant guest privileges to members of Related Facilities.

4.5.4 Social Members and persons having guest privileges pursuant to a reciprocity agreement shall not have any voting rights and shall not be eligible to serve on the Board or participate in other Association business affairs.

4.5.5 The Board may implement such other terms, conditions and restrictions upon Social Memberships, Social Members and persons having guest privileges pursuant to a reciprocity agreement as the Board deems advisable, in its discretion, including, but not limited to, any or all of the following: an application and interview process, payment of initiation fees and periodic fees, limitations on the number of Social Memberships and limitations on frequency, time and duration of use of the Clubhouse and other Common Elements.

## **SECTION 5 ADMINISTRATION**

The administration and operation of the Association and the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

5.1 General. The operation and administration of the Association and the Property shall be governed by the Dedicatory Instruments, the Rules, and the Act. The Association shall, subject to the rights of the Owners set forth in the Dedicatory Instruments and the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Dedicatory Instruments, the Act and the statute under which the Association is incorporated. All power and authority exercisable by the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Dedicatory Instruments or the Act. All references to the Association shall mean the Association acting through the Board, unless specifically stated to the contrary.

5.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Dedicatory Instruments and the Rules, (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible, and (iii) preserving the value and architectural character of the Property.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Dedicatory Instruments or the Act shall be binding upon all Owners and Tenants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws shall govern the operation and administration of the Association and shall be binding on all Owners and Tenants. The Bylaws need not be recorded.

5.5 Management. The Board may delegate to a manager or managing agent the management of any or all Units, including any management duties imposed upon the Association's officers and directors by the Dedicatory Instruments and the Act. However, such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Dedicatory Instruments and by law. The Declarant and/or an affiliate of the Declarant may be employed as the manager of the Association and/or the Property pursuant to a separate, written agreement, subject to termination as provided by the Act or the management agreement.

5.6 Rules. The Property and the conduct of Persons thereon are subject to regulation, as follows:

5.6.1. The Board has the exclusive authority to approve and implement such reasonable Rules as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules shall not be inconsistent with the Dedicatory Instruments or the Act. The inclusion in other parts of the Dedicatory Instruments of authority to approve Rules shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules shall be effective only after reasonable notice thereof has been given to the Owners.

5.6.2 An Owner may establish reasonable rules relating to the internal use of such Owner's Unit and the conduct of Persons using or visiting the Unit; provided, that the rules shall be consistent with and subject to the Dedicatory Instruments, the Rules, this Declaration and applicable law.

5.7 Association Assets; Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Dedicatory Instruments. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future Assessments or added to reserves, as determined by the Board.

5.8 Assignment of Future Income. The Association may assign its future income, including its rights to receive Common Expenses assessments, in accordance with section 82.102 of the Act only by the affirmative vote of Owners of Units to which at least fifty percent (50%) of the votes in the Association are allocated.

## **SECTION 6 ASSESSMENTS**

6.1 General. Assessments shall be determined and assessed against the Units by the Board, in its discretion, subject to the requirements and procedures set forth in this Section 6 and the Bylaws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3 and limited Assessments under Section 6.4. Annual and special Assessments shall be allocated among the Units in accordance with the allocation formula set forth in Section 4.2. Limited Assessments under Section 6.4 shall be allocated to Units as set forth in that Section. The Association will charge Assessments, and may provide for reserves, as provided in Section 82.112 of the Act. On the date a Unit is initially purchased from Declarant, the first Owner of such Unit shall (a) make a contribution to the reserve fund of the Association in the amount of \$500.00 and (b) pay to the Association the semi-annual Annual Assessment (as provided for in Section 6.2 below) for the semi-annual period in which the purchase occurs, pro-rated as of the date of such purchase.

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared by all Units in accordance with the allocation formula described in Section 4.2. Annual Assessments shall be payable annually or in equal monthly, quarterly or semi-annual installments, as established by the Board. Annual Assessments may provide, among other things, for an adequate reserve fund for the replacement of the Common Elements and those parts of the Units for which the Association is responsible and which are not funded by limited Assessments, pursuant to Section 6.4. Examples of expenses that will be taken into account in making this determination include, among other items, taxes, governmental assessments, landscaping and grounds care, common area lighting, repairs and renovation, garbage collections, wages, water charges, legal and accounting fees, insurance, management costs and fees, expenses and liabilities incurred by the Association or the Manager under or by reason of this Declaration, expenses incurred in the operation and maintenance of Condominium facilities, payment of any deficit remaining from a previous period and the creation of reserve funds. By November 1 of each year, the Board shall deliver to each Member (i) a budget for the following calendar year, setting forth for such year the estimated Common Expenses and the amount of each Member's Regular Assessment based on the Member's Allocated Interest in the Common Elements and (ii) the amount of any reserves for such year and a description of any construction, reconstruction, repairs, etc. of the Common Elements to be made in such calendar year and the amount of each Member's Special Assessment therefor based on the Member's Allocated Interest in the Common Elements. The omission or failure of the Board to fix the Assessment for any year shall not be deemed a waiver, modification, or release of the Owners from the obligation to pay Assessments, and the Owners shall continue to pay Assessments in the new year in the same amount as the Assessments for the past year until the Board provides the new budget and the new amount of the Assessments to the Members.

6.3 Special Assessments. In addition to annual Assessments, the Board may levy in any Assessment year a special Assessment against all Units in accordance with the Allocated Interests in Common Expenses set forth in Section 4.2. Among other things, special Assessments

may be used for the purpose of defraying in whole or in part the cost of any unforeseen or unbudgeted Common Expenses.

6.4 Limited Assessments. In addition to annual Assessments and special Assessments, the Board may, at its discretion, levy and allocate limited Assessments among one or more, but not all, Units, in accordance with the following requirements and procedures:

6.4.1 Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed exclusively against the Unit or Units to which that Limited Common Element is allocated, as determined by the Board.

6.4.2 Any Common Expense benefiting fewer than all of the Units but not falling within Section 6.4.1 may be assessed against the Unit or Units benefited, as determined by the Board.

6.4.3 The costs of insurance may be assessed equally or by actual cost per Unit, and the costs of common utilities may be assessed equally, in proportion to usage, or such other reasonable allocation as may be approved by the Board.

6.4.4 Reasonable attorneys' fees and other professional fees and costs incurred by the Association in connection with (i) the collection of Assessments and (ii) the enforcement of the Dedicatory Instruments, the Act, or the Rules, against an Owner or Tenant or their guests, may be assessed against the Owner's Unit.

6.4.5 Late charges, fines and interest may be assessed as provided in Section 13.

6.4.6 If any damage to the Common Elements, Limited Common Elements or another Unit or any portion of the Owner's Unit that the Association is obligated to maintain is caused by the act or omission of any Owner or Tenant, or their guests, the Association may assess the costs of repairing the damage exclusively against the offending Owner's Unit to the extent not covered by insurance.

6.4.7 If a Unit is owned by multiple individuals or an entity and the Common Elements or any other improvements or facilities related thereto are used by more than one individual and his or her immediate family, the Board is authorized to assess an Owner of the Unit for excess use of the Common Elements or such other improvements or facilities in an amount determined by the Board.

6.4.8 If Common Expense liabilities are reallocated for any purpose authorized by the Act, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Assessments levied under Sections 6.4.1 through 6.4.7 may, at the Board's discretion, be assessed as a part of, or in addition to, the other Assessments levied under Section 6.1 or 6.2.

6.5 Liability of Owners for Assessments. The obligation of an Owner to pay  
Declaration of Garages of Texas  
@ Katy Condominium

Assessments shall commence at the later of (i) the time at which the Owner acquires title to the Unit, or (ii) the due date of the first Assessment levied by the Board. The Owner at the time an Assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. Subject to Section 6.7, the liability is absolute and unconditional and no Owner is exempt from liability for payment of Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Declarant, the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Dedicatory Instruments or the Act. Until the Board levies the first annual Assessment, Declarant shall pay all of the expenses of the Condominium as the expenses accrue. From and after the date of conveyance of the first Unit by Declarant until the end of three years after such date, or the end of the Declarant Control Period, whichever is sooner, Declarant shall periodically pay to the Association an amount equal to all operation expenses of the Association, less the operational expense portion of the assessments paid by Owners other than Declarant. In other words, Declarant shall pay for any operations expense shortfall during the Declarant Control Period, and Assessments for unsold Units owned by Declarant shall be zero dollars during that time period. Notwithstanding the foregoing, Declarant shall always contribute for each of Declarant's unsold Units, when due to the Association, an amount attributable to that Unit's pro rata share, based on Allocated Interests in the Common Elements, of replacement reserves as set forth in the annual operating budget.

6.6 Assessment Lien. Assessments are secured by a continuing lien on each Unit as provided in section 82.113 of the Act. By acceptance of a deed to a Unit, each Owner grants the lien, together with the power of sale upon a default, to the Association to secure Assessments. The lien shall be superior and prior to all other liens, except only for (a) assessments, liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Unit; (b) a lien or encumbrance recorded before this Declaration is recorded; and (c) all liens securing sums due or to become due under any duly recorded first vendor's lien or duly recorded first lien Mortgage to the extent same is recorded with the Clerk of the County in which the Property is located, prior to the due date of the amount(s) owed to the Association; provided, however, the sale or transfer of any Unit pursuant to a foreclosure of such a first vendor's lien or first lien Mortgage shall not extinguish the Association's contractual lien on amounts becoming due after such foreclosure, and no such foreclosure shall relieve the foreclosed-upon Owner from liability for any monies owed by the Owner to the Association. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power to subordinate shall be entirely discretionary with the Board, and any such subordination must be signed by a duly authorized officer of the Association.

6.7 Foreclosure of Lien Remedies. The Association may foreclose the Association's lien against a Unit by judicial or nonjudicial foreclosure, and to be a purchaser of the Unit at foreclosure, all in accordance with section 82.113 of the Act.

6.8 Real Estate Taxes and Assessments. Real estate taxes, special assessments, and other charges and fees which may be levied against the Common Elements by governmental authorities, shall be allocated among and levied against the Units based upon their respective

Allocated Interests in the Common Elements as set forth in Exhibit A, and shall be a lien against each Unit in the same manner as a lien for real estate taxes and special assessments levied against the Unit alone.

6.9 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Unit the buyer shall not be personally liable for any unpaid Assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such Assessments shall remain against the Unit until released. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid Assessments against the Unit, including all Assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

## **SECTION 7 RESTRICTIONS ON USE OF PROPERTY**

All Owners and Tenants, and all Mortgagees and other secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of part or all of a Unit, covenant and agree that, in addition to any other restrictions which may be imposed by the Act, the Dedicatory Instruments, or the Rules, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

7.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Dedicatory Instruments and the Act, as amended from time to time. All covenants, restrictions and obligations set forth in the Dedicatory Instruments are in furtherance of a plan for the Property and shall run with the Property and be a burden and benefit to all Owners and Tenants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns. The Property shall be used for private uses, except as otherwise approved by the Board, and shall not be used for Residential Purposes.

7.2 Subdivision or Conversion. Except as permitted by this Declaration, no Unit, nor any part of the Common Elements, may be subdivided, partitioned or converted without the prior written approval of all Owners and all Mortgagees.

7.3 Permitted Uses and Restrictions. The Property shall be used for (i) vehicle storage, and including but not limited to the storage of automobiles, motorcycles, recreational vehicles, all-terrain vehicles, (ii) business-related storage and related office uses permitted by City ordinances or by agreement with the City, and approved by the Board, and (iii) other non-residential uses permitted by City ordinances or by agreement with the City, and approved by the Board; provided that none of the following businesses, trades, occupations or professions, whether carried on for profit or otherwise, shall be conducted, maintained or permitted anywhere on the Property: adult theatre, adult amusement facility, or any facility selling, providing or displaying adult-oriented or pornographic materials; liquidation facility; auction house; flea market; housing or raising animals; day care or child care facility; nursing home or nursing facility; any retail use; place of worship; betting establishment; or high-piled combustible storage as defined by the 2015 International Building Code. No repairs, maintenance, detailing or other

modifications shall be permitted on the Property to any type of motor vehicle not owned by Unit Owner, unless approved by the Board. Further, in no event shall any spray painting of motor vehicles or parts thereof be conducted on the Property. Without limiting the foregoing sentence, each Unit Owner hereby expressly acknowledges and agrees that pursuant to the 2018 International Building Code and the standards promulgated by the National Fire Protection Association, no cars may be stacked or parked beneath a car that is raised on a lift.

7.4 Leasing. Leases of Units shall be permitted, subject to the following conditions: (i) the Tenant's use shall comply with Section 7.3, (ii) no Unit may be subleased, (iii) a Unit must be leased in its entirety (not in part or by room) for a period of not less than 12 consecutive months provided that a Unit owner may rent car storage space which does not exceed 50% of the Unit's total floor space to tenant(s) of the Unit Owner's choice provided further that no tenant shall have any membership privileges in the Association, (iv) all leases shall be in writing, and (v) all leases shall provide that they are subject to the Dedicatory Instruments, the Rules and the Act, and that any failure of the Tenant to comply with the terms of such documents shall be a default under the lease. The Owner of the leased Unit shall, upon request of the Board, provide a copy of the signed lease to the Association.

7.5 Parking. Subject to the provisions of this Section, surface parking areas located on the Common Elements shall be available for parking by all Owners and Tenants, and their guests. Employee vehicular parking is prohibited on exterior surface parking areas of the Common Elements. The Board may establish reasonable Rules governing the use of the surface parking areas, including but not limited to the assignment of a limited number of parking spaces for the use of handicapped persons, or for the use of the Owners or Tenants of a particular Unit or owners or employees of businesses located within a Unit; provided, (i) that if parking spaces are assigned, they shall be assigned in a uniform, fair and equitable manner, and (ii) that handicapped spaces shall be reserved in accordance with law. Storage or prolonged parking of vehicles, trailers or other transportation devices in surface parking areas, or the exterior storage of personal property of any type, is prohibited unless (i) authorized by the Board, (ii) in compliance with City ordinances; and (iii) shall not exceed 24 hours in duration.

7.6 Animals. The Board shall have the exclusive authority to prohibit, or to allow and regulate, the keeping of animals on the Property, or to require and enforce removal of animals that exhibit behavioral problems whose owners fail or refuse to comply with pet restrictions. This authority may be exercised so as to permit or prohibit different types or breeds of animals, but those animals which are permitted (if any) shall be limited to common domestic dogs and cats. However, no animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. The word "animal" shall be interpreted in its broadest sense and shall include all living creatures except humans. Notwithstanding the foregoing, no provision of the Dedicatory Instruments, nor any Rule or Regulation, may prohibit the keeping of a qualified service dog or similar animal by a person who is handicapped within the meaning of the Fair Housing Amendments Act of 1988 or comparable state law.

7.7 Signs. Signs or other displays of any type may be erected (i) only at locations established by the Declarant or subsequently approved by the Board, (ii) in compliance with City sign ordinances and the design standards established for the Property by the Declarant, and (iii) approved pursuant to Section 8. The design, erection and maintenance of signs shall be subject to

the following additional requirements and conditions:

7.7.1.1 An Owner, outside whose Unit a sign identifying the Unit is located, shall be responsible for maintaining the sign in good condition and in a manner consistent with the first-class maintenance and design standards applicable to the Property as a whole, except that any common signs or directories identifying the Condominium project shall be maintained by the Association,

7.7.1.2 All signs or other displays shall be subject to prior approval by the Declarant so long as Declarant owns a Unit for sale or has the right to add Additional Real Estate to the Property.

7.8 Exterior Lighting. The location, size, color and design of all lighting fixtures or similar equipment used or shown outside of a Building must be (i) in compliance with City lighting requirements, (ii) consistent with the design standards established for the Property by the Declarant and (iii) approved by the Board pursuant to Section 8.

7.9 Outdoor Activities. Outdoor activities on the Property, such as promotional events, gatherings, demonstrations, displays or other activities which have the potential to materially affect any easement or use rights, cause a nuisance or material disturbance, create a safety or health hazard, or create material liability for the Association or any Member, shall be subject to approval by the Board. In determining whether to authorize an activity the Board shall, at minimum, take into consideration the security of the Property, the potential for disturbance or damage to the Property, the potential liability for the Association or any Member, the health and safety of Persons occupying or using the Property, and whether the activity unreasonably impairs any easement or other authorized use of the Property. Notwithstanding the foregoing to the contrary, the Declarant may conduct not more than two (2) promotional events each month on the Property until such time as all of the Units owned by Declarant are sold. Correspondingly, no sales promotional events, or so-called "open houses", shall be conducted on the Property until all of the Units owned by Declarant are sold unless the Declarant provides prior written consent.

7.10 Quiet Enjoyment; Interference Prohibited. All Owners and Tenants and their guests shall have a right of quiet enjoyment in their respective Units, subject to the usual and customary sounds, odors or activities commonly associated with occupants such as those located in the Units. Subject to the foregoing, the Property shall be occupied and used in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the reasonable use and quiet enjoyment of the Property by other Owners and Tenants and their guests.

7.11 Compliance with Law. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health, fire or safety risk, or expense, for the Association or any Owner or Tenant.

7.12 Ponds, Wetlands and Trees. Ponds, marshes, wetland areas, vegetation and trees,  
Declaration of Garages of Texas  
@ Katy Condominium

whether natural or otherwise, shall be maintained in substantially the same condition as originally existing or established by the Declarant, subject only to (i) changes authorized or made by the Association consistent with all statutes, requirements, Rules imposed on such areas and items by governmental authorities having jurisdiction and (ii) the prior approval any other governmental authorities, if required.

7.13 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights, ownership, or right-to-use plans, which has the effect of dividing the ownership or occupancy of a Unit into separate time periods, is prohibited.

7.14 Access to Units. In case of emergency, all Units and Limited Common Elements are subject to entry, without notice and at any time, by an officer or member of the Board, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Section 9, and for enforcement purposes under Section 13.

7.15 Use of balconies. Cooking grills, furniture, equipment or other physical items shall not be kept on any balcony overnight.

7.16 Penetration of Floors. No penetration of the base concrete floors shall be made by any Unit Owner, Tenant or agent thereof without prior Board authorization.

7.17 Sale of Unit. In the event a Unit Owner desires to sell his Unit, no Unit Owner shall cause to permit or advertise an open house showing of the Unit.

7.18 Clubs. Lodges. Associations and Organizations as a Unit Owner are Prohibited. No Unit Owner shall be a club, lodge, association or organization of persons who have a common purpose.

7.19 INTENTIONALLY DELETED

7.20 No Subdivision, Consolidation or Conversion of Units. No Unit will be subdivided or consolidated with another Unit or converted to Common Elements, except as reserved to Declarant as a Development Right in Section 13.3, or unless approved by the Board after request by an Owner.

7.21 No Structural Modification of Unit or Interior Finish Out without Board Approval. It is the concurrent responsibility of Declarant, the Association and each Owner to ensure the continuing structural integrity of each of the Buildings within the Condominium. The construction characteristics of the Buildings do not permit the addition of loads, except as are specifically engineered and approved in accordance with the provisions of the International Building Code. It is also anticipated, however, that an individual Owner may elect, at the Owner's sole expense, to erect a storage loft within such Owner's Unit and/or to install a motor vehicle lift within such Owner' Unit. Accordingly, it shall be permissible for an Owner to make alterations to the interior of such Owner's Unit that do not adversely affect the continuing structural integrity of each of the Buildings within the Condominium; provided, however, that such alterations shall be absolutely subject to the limitation that no alteration shall be allowed

which causes an adverse effect upon the Common Elements or structural integrity of any Building or any Unit. Accordingly, each Owner who intends to perform any improvement within such Owner's Unit, including any improvements that could increase the load beyond that of storing items directly on the concrete floor (including, without limitation, the installation of any such loft, lift, or shelving within the Unit), shall first notify Declarant, while in control, and thereafter the Board, of its intentions, and Declarant or the Board, as applicable, may provide to such Owner specifications concerning permissible interior finish out to such Owner's Unit, and no such finish out or structural modifications or alterations will be made in such Owner's Unit unless and until plans, specifications, and any other documents requested by Declarant or the Board, as applicable, are submitted to and approved by the Declarant or the Board. Neither the Declarant nor the Board will be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request. Any structural modification made to a Unit (a) without the required Declarant or Board approval, (b) not in conformity with the required Declarant or Board approval, or (c) without the required permit from any applicable Governmental Authority, are unauthorized modifications. The Declarant or the Board, may require the Owner to restore the Unit, at the Owner's expense, to the condition before the unauthorized modifications were made, and the Owner shall be liable for any damage caused as a consequence thereof to any other Unit or to any Common Elements.

7.22 Restrictions on Transfer. A Unit may not be conveyed pursuant to a time-sharing arrangement, and all leases and rental agreements of a Unit shall be in writing and be on a form approved by the Board or be subject to the reasonable requirements of the Board.

7.23 Life Safety Concerns. In an effort to maintain a safe environment for the mutual benefit of each of the Owners, Condominium safety measures will include the following items.

7.23.1 Emergency Contacts. The Association will provide, and update at least annually, a list of the names and emergency contact information of individuals associated with the Condominium, including the Property Management Company, Property Manager(s), and Board Members, to the Police and Fire Departments serving the Condominium.

7.23.2 Master Keying. The Association will ensure that all Owners maintain the integrity of the Condominium's master-key system, which ensures emergency access by the area Police and Fire Departments. The addition of new locks will conform to the current master key scheme, and, in the event nonconforming locks are installed, the affected Owners will be liable for any damage caused to the Condominium as a result of necessary forcible entry by the Police or Fire Departments. The Board will designate from time to time the person(s), which may include a representative(s) of the Property Management Company, who will have possession of a master key.

7.23.3 Annual Inspection. The Association will advise all Owners that the Fire Department serving the Condominium will conduct an inspection on each and every Unit in the Condominium on an annual basis if requested by the Fire Department.

7.24 Affiliate Marketing; Restriction against Change of the Name. For a period of ten (10) years after the Effective Date, the governing authority of Declarant and/or such governing authority's affiliates (meaning an entity that controls, is controlled by, or is under common control with such governing authority), shall have the right to enter the common areas, and the right to enter individual Units for which entry has been authorized by the Owner thereof, to show the Condominium and the interior of the entered Units to prospective purchasers, lenders and investors in connection with the construction and/or marketing for sale of units in other condominiums constructed or to be constructed to operate under the Garages of Texas trade name. For such right of entry and access, after the Declarant Control Period the Association shall provide the governing authority with such keys and/or codes as is necessary to gain entry to the common areas through any gated fence that exists. In addition, during such ten year period, (a) the name of the Condominium cannot be changed from the Garages of Texas @ Katy, (b) the name of the Association cannot be changed from Garages of Texas @ Katy Condominium Association, Inc., and (c) the Garages of Texas signs that Declarant installs on and around the Condominium buildings and common areas of the Condominium cannot be modified or removed, each without the prior written consent of the governing authority of Declarant, which consent may be given or denied in such governing authority's sole and absolute discretion. By acceptance of its deed to a Unit, each Owner hereby acknowledges and agrees that part of the consideration received by Declarant and the governing authority of Declarant for developing, constructing and selling Units in the Condominium is the future benefit such governing authority and/or its affiliates will receive from being able, for the ten (10) year period provided for in this Section 7.24, to (i) keep the Garages of Texas trade name on signs located on the Condominium, (ii) keep the name Condominium Garages of Texas @ Katy, a Condominium, and the corporate name of the owners association Garages of Texas @ Katy Condominium Association, Inc., and (iii) enter upon and show the common areas of the Condominium (and Units for which entry therein has been authorized by their Owners) of an existing Garages of Texas condominium project to prospective investors and lender for construction of, and prospective purchasers of units in, Garages of Texas condominium projects to be constructed in the future.

## **SECTION 8 ARCHITECTURAL STANDARDS**

8.1 Restrictions on Improvements. One of the purposes of this Declaration is to ensure that the Property is kept architecturally attractive and substantially uniform in appearance. Therefore, except as set forth in Section 8.6, the following restrictions and requirements shall apply to improvements to the Property:

8.1.1 Subject to applicable state and federal law and this Section 8, no modifications, alterations, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "improvements"), including but not limited to, any structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, antenna or other type of sending or receiving apparatus, sign, flag, display, decoration, color change, shrubbery, material topographical or landscaping change, shall be made, or caused or allowed to be made, by

any Owner or Tenant, or their invitees, in any part of the Common Elements or Limited Common Elements, or in any part of the Unit which affects the Common Elements, Limited Common Elements or another Unit, or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or an architectural committee appointed by it, and in compliance with the requirements of this Section. Declarant's written consent shall also be required for improvements until such time as Declarant no longer owns any Unit for initial sale or has the right to add Additional Real Estate to the Property.

8.1.2 The Board may appoint, supervise and disestablish an architectural committee, and specifically delegate to it part or all of the functions which the Board exercises under this Section 8, in which case the references to the Board shall refer to the architectural committee where appropriate. The architectural committee shall be subject to the supervision of the Board.

8.1.3 The Board shall establish the criteria for approval of improvements, which shall include and require, at a minimum:

8.1.3.1 substantial uniformity of color, location, type and design in relation to existing Buildings and topography,

8.1.3.2 comparable or better quality of materials as used in any existing improvement on the Property,

8.1.3.3 ease of maintenance and repair,

8.1.3.4 adequate protection of the Property, the Association, Owners and Tenants from liability and liens arising out of the proposed improvements,

8.1.3.5 substantial preservation of other Owners' sight lines, if material,

8.1.3.6 compliance with governmental laws, codes and regulations. The Board, or the appointed architectural committee if so authorized by the Board, has the right to establish such additional criteria, architectural or otherwise, as it deems appropriate, and shall be the sole judge of whether such criteria are satisfied.

8.1.4 Approval of improvements which immaterially encroach upon another Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the improvements are approved, notwithstanding any contrary requirement in the Dedicatory Instruments or the Act. A file of the Board resolutions approving or denying all applications for improvements shall be maintained permanently as a part of the Association's records.

8.1.5 Interior improvements to a Unit or its Limited Common Elements may be made without approval by the Board, provided that such improvements do not impair the structural or weather-tight integrity of the Common Elements, interfere with utilities or

Building operating systems or violate applicable governmental laws, codes or regulations. The Board shall have the authority to approve and implement such reasonable Rules as it deems necessary from time to time for the purpose of restricting interior improvements to a Unit or its Limited Common Elements which may impair the structural or weather-tight integrity of the Common Elements, interfere with utilities or Building operating systems or violate applicable governmental laws, codes or regulations. To the extent interior improvements to a Unit or its Limited Common Elements involve electrical work, such electrical work must be performed by a licensed electrician.

8.2 Review Procedures. The following procedures shall govern requests for improvements under this Section:

8.2.1 Detailed plans, specifications and related information regarding any proposed improvement, in form and content acceptable to Declarant, during the Control Period, and thereafter to the Board, shall be submitted to the applicable one at least forty five days prior to the projected commencement of construction. No improvements shall be commenced prior to approval.

8.2.2 The Board or Declarant (as applicable) shall give the Owner written notice of approval or disapproval. If the Board or Declarant (as applicable) fails to give notice of approval or disapproval within thirty (30) days after receipt of said plans and specifications and all other information requested by the applicable one, then approval shall be deemed to be granted; provided, that the improvements are done in accordance with the plans, specifications and related information which were submitted.

8.2.3 If no request for approval is submitted, approval shall be deemed to be denied.

8.3 Unit Demising Walls. The terms of this Section 8.3 do not apply to Declarant. Except as provided for in Section 8.3.3 below, prior to an Owner conveying a Unit that does not have a Demising Wall in one or more of the General Common Element Space between such Unit, the Owner shall comply with the following requirements prior to conveying the Unit:

8.3.1 The Owner shall construct all Demising Walls necessary to separate the Unit being sold from all adjacent Units. Each Demising Wall shall be constructed in a workmanlike fashion and using industry-accepted materials. Each such Demising Wall shall be constructed at least to the stage where the wallboard is installed and the wallboard joints are taped, joint compound is applied, and the joint compound is sanded to a smooth finish.

8.3.2 All work to be performed under this Section 8.3 shall be at the Owner's expense, and be subject to inspection and approval by the Board. The Board shall, upon prior written application by the Owner of that Unit, grant that Owner reasonable access to the General Common Elements to perform the work required under this Section 8.3; provided, that such grant may be conditioned upon the Owner's compliance with reasonable requirements established by the Board relating to (i) health and safety considerations, (ii) liability protection for the Association and other Owners and Tenants

in the form of a certificate of insurance reasonably acceptable to the Association, (iii) avoidance of any material and adverse impact on the Property, and (iv) compliance with all laws, ordinances, rules, and regulations of all governmental authorities having jurisdiction over the Property, including, but not limited to evidence of a building permit from the City. Disapproval by the Board (or the architectural committee) and Declarant (which is required as long as Declarant is the owner of a Unit) may be based only upon the Owner's failure or refusal to comply with the requirements established by the Board pursuant to this Section.

8.3.3 Notwithstanding anything to the contrary in this Section 8, an Owner of adjoining Units shall not be required to construct the wall described in Section 8.3.1, if the adjoining Units will be conveyed to the same Person and occupied as a single, homogeneous premises.

8.4 Remedies for Violations. The Association may undertake any measures, legal, equitable or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' and other professional fees and costs of enforcement incurred by the Association, regardless of the type of action taken (if any). Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of a Building or Unit to its prior condition if any improvements were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit.

8.5 Owner Responsibility/Indemnity. The Owner who causes an improvement to be made, regardless of whether the improvement is approved by the Board, shall be responsible for the construction work and any claims, damages, losses or liabilities arising out of the improvements. The Owner shall hold harmless, indemnify and defend the Declarant and Association, and its members, managers, officers, directors and committee members, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and costs of litigation, arising out of (i) any improvement which violates any governmental laws, codes, ordinances or regulations, (ii) the adequacy of the specifications or standards for construction of the improvements (iii) the construction of the improvements, or (iv) any use of the Owner's Unit or the property except for a Permitted Use as defined at Section 7.3 above.

8.6 Exemptions. The requirements set forth in this Section 8 (except Section 8.5) shall not apply to original construction by Declarant or its affiliates in connection with its completion and sale of the Units.

## **SECTION 9 MAINTENANCE AND REPAIR**

9.1 Association Obligations. Subject to Section 9.2, the Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements, and Limited Common Elements, including any improvement thereto, subject to the following qualifications or additions:

Declaration of Garages of Texas  
@ Katy Condominium

9.1.1 The cost of maintenance, repair or replacement of part or all of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is allocated in accordance with Section 6.4.1.

9.1.2 The cost of maintenance, repair or replacement of a part of the Common Elements which benefits only a certain Unit or Units, may be assessed against the Unit or Units benefited in accordance with Section 6.4.2.

9.1.3 The Association may assign to an Owner the obligation for maintenance of a Limited Common Element allocated to the Owner's Unit and impose standards for the maintenance and does hereby assign to each Owner such obligation with respect to the garage door, the exterior door and the HVAC equipment that serves each Unit owned by such Owner. However, if the Owner fails to perform the maintenance to the standards established by the Association, the Association may enter the Limited Common Element, perform the maintenance and assess the Owner's Unit for the costs.

9.1.4 The Association may elect to maintain, repair or replace mechanical, structural or other components within the Units and assess the costs against the Unit, if the failure or impairment of the component could result in damage to the Common Elements or other Units, impair the function of any common Building system, or create a health or safety hazard.

9.1.5 The Association shall be responsible for incidental damage caused to a Unit or its Limited Common Elements by work undertaken by the Association pursuant to this Section.

9.1.6 If damage is caused to the Common Elements, Limited Common Elements or other Units by an Owner or Tenant, or their guests, or by any condition in the Unit or Limited Common Elements which the Owner or Tenant has caused or allowed to exist, then the Association may repair the damage or correct the condition and assess the cost thereof against the responsible Owner's Unit.

9.2 Owner Obligations. Each Owner shall, at its expense, undertake the following obligations for maintenance, repair and replacement:

9.2.1 To maintain, repair, and replace (i) the Owner's Unit; and (ii) any Limited Common Elements allocated to the Unit except to the extent maintained by the Association under Section 9.1 above. Owner or Tenant shall obtain the prior written approval of the Association prior to replacing, modifying or painting any exterior window or door. The Units and Limited Common Elements shall be kept in good, clean and sanitary condition and repair.

9.2.2 The Owner or Owners of adjacent Units that are separated by a General Common Element space within which a demising wall is not constructed shall maintain that General Common Element space and keep that General Common Element space in good, clean, and sanitary condition. Damage to that General Common Element space

may be repaired by the Association under Section 9.1.7. The obligations under this Section 9.2.2 shall be joint and several if the adjacent Units are not owned by the same Person.

9.2.3 To perform its maintenance obligations promptly and in such manner as not to damage the Property, nor unreasonably disturb or cause a hazard to persons occupying or otherwise using the Property. The Board may require that the Owners perform their maintenance obligations in accordance with reasonable standards established by the Board and in a manner consistent with the Declarant's design plan for the common interest community.

9.2.4 To promptly pay or reimburse the Association for any costs incurred by the Association for the repair of any damage to the Common Elements, Limited Common Elements or other Units, caused by an Owner or Tenant, or their guests, or caused by any condition in the Unit or Limited Common Elements which the Owner or Tenant has allowed to exist.

9.2.5 If an Owner fails or refuses to perform the Owner's duty to maintain, repair or replace, the Association shall have authority to undertake the necessary work and assess the Owner's Unit for the cost thereof; provided that reasonable notice and an opportunity to cure the violation shall first be given to the Owner.

Even though the garage and entry doors of a Unit and any HVAC equipment installed by an Owner to serve a Unit are Limited Common Elements, for which replacement can be performed by the Association with the right to levy a limited Assessment against the Owner of the Unit for the cost thereof, such Owner shall have the right, after giving written notice to the Board, to replace the garage door and/or the opener and accessories therefor, the exterior door, and/or any HVAC equipment serving such Owner's Unit, at the Owner's sole cost and expense.

9.3 Optional Maintenance by Association. In addition to the maintenance described in Section 9.1, the Association may, with approval of the Board, undertake to provide additional maintenance to the Units.

## **SECTION 10 INSURANCE**

10.1 Association Insurance. The Association shall obtain and maintain the following insurance relating to the Property:

10.1.1 The Association shall, at a minimum, maintain property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent of the insurable "replacement cost" of the Property, less deductibles; but excluding (i) land, footings, excavation and other items normally excluded from coverage, and (ii) items such as ceiling or wall finishing materials, floor coverings, plumbing, lighting and other interior fixtures, built-in equipment, business equipment, or any other improvement or betterment installed within the Units. The policy or policies shall also cover personal property owned by the Association. The policy or policies shall also contain "Inflation

Guard" and "Agreed Amount" endorsements, if reasonably available. The Association may enter into an agreement with a Mortgagee or a guarantor, insurer or servicer of a mortgage, obligating the Association to keep other coverages or endorsements in effect. The Association may also enter into agreements among all Owners as to the allocation of insurance proceeds among their Units.

10.1.2 Commercial general liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of one million dollars per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Tenant because of negligent acts of the Association or other Owners or Tenants.

10.1.3 Such other types and amounts of insurance as may be determined by the Board to be necessary or desirable, including but not limited to officers and directors' liability insurance, workers' compensation insurance, and insurance or fidelity bonds covering dishonest acts by those Persons having control or custody of the Association's funds.

10.2 Cancellation; Notice of Loss. All policies of property insurance and comprehensive general liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least thirty days' prior written notice to the Association, the insureds and all Mortgagees.

10.3 Conflicts with Act. In the event of a conflict between this Section 10 and the Act, this Section 10 shall control, it being the intention of Declarant that the Association and the Owners shall have authority and discretion to deal with the unique insurance needs associated with the uses of the Units and the requirements of Mortgagees.

10.4 Owners' Insurance/Indemnity. Each Owner shall obtain and maintain the following insurance and provide the described indemnities:

10.4.1.1 Property insurance injuring any insurable improvement within the Owner's Unit for the full insurable replacement value of such improvement.

10.4.1.2 Commercial general liability insurance covering the Owner's Unit, and the activities of the Owner, and its officers, directors, employees and agents in connection with the Owner's occupancy, operation, management and use of the Unit, including any additional coverages customarily carried for unique or hazardous activities arising out of a business or activities conducted on the Unit. Said liability insurance shall be in the minimum amounts of (i) \$1,000,000 for an accident affecting more than one person in or resulting from one occurrence and (ii) \$1,000,000 property damage for each Occurrence. Each Owner shall furnish a certificate or certificates of such insurance naming the Association as an additional insured.

10.4.1.3 Each Owner shall hold harmless, indemnify and defend the Declarant,

other Owners and the Association, and their respective officers, directors and employees, from and against all claims, actions, damages and other liabilities, including attorneys' fees and costs, arising out of incidents occurring within such Owner's Unit or arising out of the conduct of the Owner or Tenants of the Unit or their employees, agents, contractors and guests, unless caused by the intentional or negligent act or omission of the party to be indemnified.

10.4.1.4 The Owner's insurance shall be primary as against the Association's insurance for damages to any interior improvement to the Units, and there shall be no right of contribution against the Association's insurance, with respect to damage or activities within the Owner's Unit.

## **SECTION 11 RECONSTRUCTION, EMINENT DOMAIN AND TERMINATION**

11.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be commenced as soon as practicable after the casualty and shall be substantially in accordance with the plans, specifications and design of the Property as initially constructed and subsequently improved.

11.2 Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern; provided, (i) that notice shall be given as provided in Section 11.4 and 17.4, (ii) that the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements and (iii) that any awards or proceeds shall be payable to the Association for the benefit of the Owners and the Mortgagees of their Units, as their interests may appear.

11.3 Termination and Liquidation. The termination of the Condominium, and the distribution of any proceeds therefrom, shall be governed by the Act, except that any distributions shall be allocated based upon the value of the Units as unanimously agreed upon by the Owners, or by appraisers agreed upon in writing by a majority of the Owners and Mortgagees, and shall be made to Owners and their Mortgagees as their interests may appear.

11.4 Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to the Mortgagees within ten business days after the casualty or first legal notice of condemnation.

11.5 Association's Authority. In all cases involving reconstruction, condemnation, eminent domain, termination of the Condominium, the Association may (i) act on behalf of the Owners in all proceedings, negotiations and settlement of claims, or (ii) delegate the authority to act to an Owner or Owners of the affected Units if the casualty affects fewer than all Units. If such authority is retained and exercised by the Association, then all proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their Mortgagees. Mortgagees are entitled to priority for awards and distributions in accordance with the priorities established by the Act and their mortgage loan documents, as their interests may appear.

## **SECTION 12 EASEMENTS**

The following appurtenant easements and rights are hereby granted, conveyed, dedicated and reserved on, over, under and across the Property, as applicable.

12.1 Access. Each Unit shall be the beneficiary of a nonexclusive easement for access to and from public roadways and walkways on and across those portions of the Common Elements designated for use as roadways, driveways or walkways, as originally constructed, shown on the Plat or otherwise designated by the Association, subject to any restrictions authorized by (i) the Dedicatory Instruments or the Rules, or (ii) any governmental authority.

12.2 Use and Enjoyment. Each Unit shall be the beneficiary of nonexclusive easements for use and enjoyment on and across the Common Elements and any Limited Common Element allocated to the Units, subject to any restrictions authorized or imposed by the Dedicatory Instruments.

12.3 Structural Support. Each Unit and the Common Elements shall be subject to and the beneficiary of nonexclusive easements for structural support in all walls, columns, joists, girders and other structural components located in or passing through another Unit or other parts of the Buildings or shared with an adjoining Unit or the Common Elements.

12.4 Encroachments. Each Unit and the Common Elements, and the rights of the Owners and Tenants therein, shall be subject to a nonexclusive easement in favor of the adjoining Units for encroachments caused by the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, and for any improvement which is added in compliance with Section 8. If there is an encroachment upon another Unit or the Common Elements, as a result of any of the aforementioned causes, an easement shall exist for the encroachment, for the use, enjoyment and habitation of any encroaching Unit or improvement, and for the maintenance thereof. Any improvement added pursuant to Section 8 shall be limited to minor encroachments, and no easement shall exist unless the proposed improvement has been approved and constructed as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

12.5 Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Tenants thereof, and the Common Elements and Limited Common Element, shall be subject and benefited by a nonexclusive easement in favor of the Association for the maintenance, repair, replacement and reconstruction of the Common Elements, Units and any improvements related thereto, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Dedicatory Instruments. Each Owner shall afford to the Association and its management agents and employees, access at reasonable times and upon reasonable notice, to and through the Unit and its Limited Common Elements for maintenance, repair and replacement; provided that access may be had without notice and at any time in case of emergency.

12.6 Utilities and Services. The Common Elements and the Units shall be subject to and benefited by nonexclusive easements in favor of the Association, the City and all utility

companies and other service providers for the installation, use, maintenance, repair and replacement of all utilities, services and common operating systems, such as natural gas, electricity, cable TV and other electronic communications, water, sewer, and similar services, fire control systems and other common operating systems, and metering and control devices, which exist, which are constructed as part of the development of the Property which are approved by the City, which are approved by the Association under authority contained in the Dedicatory Instruments or the Act, or which are described or referred to in the Plat, this Declaration or other recorded instruments. Each Unit, and the rights of the Owners and Tenants thereof, shall also be subject to and benefited by a non-exclusive, easement in favor of the other Units, the Common Elements and the Association for all such utilities, services, fire control systems and other common operating systems. Utilities and related services or systems shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Tenants, nor affect the structural or architectural integrity of the Buildings, Units or any Common Element improvement.

12.7 Emergency Access to Units. In case of emergency, all Units and Limited Common Elements are subject to an easement, without notice and at any time, in favor of the Association for access by the Association's management agents, and in favor of fire, police or other public safety personnel.

12.8 Project Signs. Declarant and the Association shall have a non-exclusive easement and right to erect and maintain temporary and permanent signs and related monuments identifying the Condominium on the Common Elements and on Units owned by the Declarant. Those parts of the Property on which monument signs or any related decorative improvement is located shall be subject to non-exclusive easements in favor of the Association for the continuing use, maintenance, repair and replacement of said signs and any improvements.

12.9 Declarant's Easements. The Units and Common Elements are subject to exclusive easements in favor of the Declarant for the exercise of its Special Declarant Rights and Development Rights as described in the Dedicatory Instruments.

12.10 Other Easements. The Property shall be subject to such other easements as may be recorded against the Property by reason of the City's requirements in connection with the development of the Property.

12.11 Wetlands. The City and other applicable governmental authorities or agencies as shall from time to time have jurisdiction over the Property shall have a non-exclusive easement on and across the Common Elements for reasonable access to and maintenance of any ponds and wetlands, if any, located on the Property.

12.12 Continuation. Scope and Conflict of Easements. The easements set forth in this Section (i) shall run with the land and shall be appurtenant to the benefited Property, (ii) shall supplement and not limit any easements described elsewhere in this Declaration, or otherwise recorded, (iii) shall be permanent, subject only to termination in accordance with the terms of the easement, and (iv) shall include reasonable access to the easement areas over and through the Property for purposes of construction, maintenance, repair, replacement and reconstruction.

12.13 Non-Interference; Impairment Prohibited. All Persons exercising easement rights shall do so in a reasonable manner so as not to materially interfere with the operation of the Property or damage to the Property and shall be financially liable for all costs of repair of any part of the Property which is damaged by the Person's exercise of the easement rights. No Person shall impair, obstruct or cause damage to any easement area, or any improvement or equipment installed therein. Notwithstanding anything in this Declaration to the contrary, no Owner or Tenant shall be denied reasonable access to his or her Unit or the right to utility services thereto.

12.14 Benefit of Easements. All easements benefiting a Unit shall benefit the Owners and Tenants of the Unit, and their guests. However, an Owner who has delegated the right to occupy the Unit to a Tenant or Tenants, whether by a lease or otherwise, does not have the use and other easements rights in the Property during such delegated occupancy, except (i) as a guest of an Owner or Tenant or (ii) in connection with the inspection of the Unit or recovery of possession of the Unit pursuant to law.

### **SECTION 13 COMPLIANCE AND REMEDIES**

Each Owner and Tenant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Dedicatory Instruments, the Rules, and such amendments thereto as may be made from time to time, and the decisions of the Association. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Dedicatory Instruments or the Act.

13.1 Entitlement to Relief. Legal relief may be sought by the Association, at its discretion, against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Dedicatory Instruments, the Rules, the Act or the decisions of the Association. However, no Owner may withhold any Assessments payable to the Association or take or omit other action in violation of the Dedicatory Instruments, the Rules or the Act, as a measure to enforce such Owner's position, or for any other reason.

13.2 Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right (or the obligation if so indicated) to implement any one or more of the following actions against Owners and Tenants and/or their guests, who violate the provisions of the Dedicatory Instruments, the Rules or the Act:

13.2.1 Commence legal action for damages or equitable relief in any court of competent jurisdiction.

13.2.2 Impose late charges of up to the greater of one hundred dollars, or fifteen percent of the amount past due, for each Assessment or installment thereof past due more than thirty days, and impose interest at the highest rate permitted by law accruing beginning on the first day of the month after the Assessment or installment was due. In the absence of a Board resolution establishing a late charge, the late charge shall be one hundred dollars for each late payment and shall be automatically imposed.

13.2.3 In the event of default of more than thirty (30) days in the payment of any

Assessment or installment thereof, all remaining installments of Assessments levied against the Unit owned by the defaulting Owner, together with any late payment charges, interest, attorneys' and other professional fees and costs of collection, may be accelerated by the Board and shall then be payable in full if not paid within ten days after receipt of notice from the Association.

13.2.4 Impose reasonable fines, penalties or charges for each violation of the Act, the Dedicatory Instruments or the Rules.

13.2.5 Restore any portions of any Common Elements, Unit, or Limited Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Tenant or their guests in violation of the Dedicatory Instruments, and to assess the cost of such restoration against the responsible Owners and their Units.

13.2.6 Enter any Unit or Limited Common Element in which a violation or breach of the Dedicatory Instruments or the Rules exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Tenants, or their guests, or the safety or soundness of any other part of the Property or the property of the Owners or Tenants, and to summarily abate and remove, at the expense of the offending Owner or Tenant, any structure, thing or condition in the Unit or Limited Common Elements which is causing the violation; provided, that any improvement which is a part of a Unit may be altered or removed only pursuant to a court order or with the agreement of the Owner.

13.2.7 Foreclose any lien arising under the provisions of the Dedicatory Instruments or under law, in the manner provided by the Act and Section 6.

13.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Section 13.2.4, 13.2.5 or 13.2.6, the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing as contemplated by the Dedicatory Instruments and the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days after receipt of the hearing request by the Board, and with at least ten (10) days prior written notice to the offender. If the offender fails to timely request a hearing or to appear at the hearing, then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered to the offender at the hearing. If the Board delegates the hearing duties described in this Section to a committee, then references in this Section to the Board's hearing duties shall refer to the committee.

13.4 Lien for Charges, Penalties Etc. Any charges, fines, expenses, penalties, interest or other impositions under this Section shall be a lien against the Unit of the Owner or Tenant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as Assessments under Section 6. The lien shall attach as of the date of imposition of the remedy but shall not be final as to violations for which a

hearing is held until the Board makes a written decision at or following the hearing. All remedies shall be cumulative, and the exercise of or failure to exercise, any remedy shall not be deemed a waiver of the Association's right to pursue any others.

13.5 Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes pursuant to the provisions of the Act, Dedicatory Instruments or Rules, whether or not finally determined by a court or arbitrator, the Association may assess the Unit owned by the violator with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees and other professional fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. Such expenses shall also include any collection or contingency fees, or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Tenant. Such collection or contingency fees or costs shall be the personal obligation of the Owner of the Unit and shall be a lien against such Owner's Unit.

13.6 Liability for Acts of Owners and Tenants. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Tenants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Tenant. However, any insurance deductible amount and/or increase in insurance rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

13.7 Enforcement by Owners. The provisions of this Section shall not limit or impair the independent rights of Owners to enforce the provisions of the Dedicatory Instruments, the Rules, and the Act as provided therein.

13.8 Pre-litigation Notice Requirement. Any litigation, administrative proceeding or other action instituted or intervened in by or in the name of the Association, exclusive of any action or other proceeding (i) to collect Assessments or foreclose Assessment liens, or (ii) to enforce the Dedicatory Instruments or the Rules, is subject to prior approval by the Owners of Units to which are allocated in excess of fifty percent (50%) of the total votes in the Association. The Owners' approval shall be obtained at a meeting of the members of the Association (not a vote by mailed ballot) and the Owners shall be provided, prior to the meeting, with sufficient detailed information fairly presenting the facts forming the basis of the proposed litigation, and the advantages and disadvantages of the proposed litigation, upon which the Owners can make an informed decision as to whether the litigation or other action is in the best interests of the Association and its Members,.

## **SECTION 14 SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves exclusive and unconditional authority to exercise the following Special Declarant Rights and other rights described in this Section.

14.1 Complete Improvements. To complete all the Buildings, Units and any other improvement indicated on the Plat and Plan, or otherwise included in Declarant's development plans, or authorized by the City or the Declaration, and to make improvements in the Units owned by the Declarant and Common Elements to accommodate the exercise of any declarant rights; and to execute and record a final subdivision plat of the Property, without the joinder of any Owners of Units, if the City (or other applicable authority with jurisdiction over the Property) permits the filing of an approved final subdivision plat of the Property only after construction of improvements on the Property has been completed.

14.2 Add Additional Real Estate. To add the Additional Real Estate to the Property as described in Section 15, and to exercise any other Development Rights set forth in Section 15 or elsewhere in this Declaration or in any amendment to this Declaration.

14.3 Relocate Boundaries, Subdivide, Combine, Convert and Alter Units. To relocate boundaries between Units, subdivide, combine and convert Units, and to otherwise alter Units owned by it, to the extent permitted by the Act and in accordance with Section 15, as applicable.

14.4 Marketing. To construct, operate and maintain a sales office, management office, models, and other development, sales and rental facilities within the Common Elements, and within any Units owned or leased by Declarant from time to time located anywhere on the Property or the Additional Real Estate if applicable; and for so long as Declarant owns or leases a Unit in the Property, to direct attention to the Condominium, to use photographs of and information about the Condominium, and to allow marketing tours of the General Common Elements of the Condominium, in Declarant's or its Affiliate's marketing of units in other similar condominium projects that are being developed by Declarant or its Affiliate. Declarant, or its successor and assigns are authorized and permitted to photograph Units, personal property within units and other portions of the Common Elements for the purpose of marketing the sale of Units or car show events.

14.5 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on any Unit owned by Declarant and on the Common Elements or on the Additional Real Estate.

14.6 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents, prospective purchasers or other invitees through and over the Common Elements and Limited Common Elements for the purpose of exercising its declarant rights.

14.7 Control of Association. To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board pursuant to Section 82.103 of the Act, until the earliest of (the "Declarant Control Period"): (i) voluntary surrender of control by Declarant or (ii) conveyance to Owners other than Declarant of seventy-five percent (75%) of the total number of Units authorized to be included in the Property. Notwithstanding the foregoing, the Owners other than Declarant shall have the right to nominate and elect not less than thirty-three and one-third percent of the members of the Board at a meeting of the Owners which shall be held within one hundred twenty (120) days following the conveyance by Declarant of fifty percent (50%) of the total number of Units authorized to be included in the Property.

14.8 Consent to Certain Amendments. Declarant's written consent shall be required for any amendment to the Dedicatory Instruments or Rules so long as Declarant owns any Unit for initial sale or has the right to add Additional Real Estate to the Property. Furthermore, for so long as Declarant owns or leases a Unit, Declarant's approval shall be required to amend this Declaration for the purpose of changing the name of the Condominium from Garages of Texas @ Katy Condominium.

14.9 Transfer. The deed of conveyance for the first transfer of a Unit shall contain the following provision: "Grantor also hereby grants to the Grantee, its successors and assigns, as rights and easements appurtenant to the above described real estate, the rights and easements for the benefit of said property set forth in the Declaration of Condominium, aforesaid, and Grantor reserves to itself, its successors and assigns, the rights and easements set forth in said Declaration for the benefit of the remaining property described therein. This Deed is subject to all rights and easements set forth in said Declaration the same as though the provisions of said Declaration were recited and stipulated at length herein."

14.10 Approval of Unit Plans and Specifications. Approve plans and specifications submitted by an Owner for the finish out or renovations of the interior of a Unit.

14.11 Limitations on Special Declarant Rights. Unless sooner terminated by a recorded instrument signed by Declarant, and except for the right to control the Association during the Declarant Control Period as provided for in Section 14.7 above, any Special Declarant Right may be exercised by Declarant for the period of time ending on the earlier to occur of (i) ten (10) years after the Effective Date and (ii) the date on which Declarant has conveyed all Units to Owners other than Declarant or its Affiliates. Notwithstanding the foregoing limitations on Special Declarant Rights, if the subdivision law of the City (or other applicable governmental authority with jurisdiction over the Property) permits a final subdivision plat of the Property to be recorded only after construction of all improvements within the Property have completed and approved by the City (or the governmental authority), then Declarant reserves the right, as part of the Special Declarant Right to complete the improvements indicated on the Plat and the Plans as set forth in Section 82.003(22)(B) of the Act, to sign and record the final subdivision plat of the Property in the Official Public Records of the County in which the Property is located, after the City (or the governmental authority) has approved it. By acceptance of the deed to its Unit, each Owner of a Unit hereby authorizes the Declarant to so sign and record such approved final subdivision plat of the Property.

14.12 Assignment. The Special Declarant Rights reserved by Declarant under this Declaration may be transferred as provided in § 82.104 of the Act; provided, however, such a transfer by Declarant shall not transfer any Special Declarant Rights unless expressly so provided in the transfer instrument and unless the transferee also executes the transfer instrument, as required by the Act.

## **SECTION 15 DEVELOPMENT RIGHTS**

15.1 Additional Real Estate. Declarant hereby expressly reserves the right to add the Declaration of Garages of Texas @ Katy Condominium

Additional Real Estate to the Property, by unilaterally executing and recording a supplemental declaration pursuant to Section 82.060 of the Act, subject to the following conditions:

15.1.1 The right of Declarant to add the Additional Real Estate to the condominium shall terminate five years after the date of recording of this Declaration or upon earlier express written withdrawal of such right by Declarant or a successor Declarant. There are no other limitations on Declarant's rights hereunder, except as may be imposed by law.

15.1.2 The Additional Real Estate is described in Exhibit C attached hereto. The Additional Real Estate may be added to the Property in parcels consisting of one or two platted or unplatted parcels, or portions thereof, and in any sequence.

15.1.3 Declarant has no obligation to add the Additional Real Estate to the Property and Declarant may, at Declarant's sole discretion, use the Additional Real Estate, or any portion thereof, for compatible uses to the Property that are authorized by applicable zoning requirements. If Declarant decides to add the Additional Real Estate to the Property, there are no assurances as to the times at which any part of the Additional Real Estate will be added, the order in which it will be added, the number of Units per phase nor the size of the Units. The Additional Real Estate may be developed by Declarant or its successors in interest for any purpose, subject only to approval by the appropriate governmental authorities.

15.1.4 The maximum number of Units that may be created within the Additional Real Estate described as such on the date of this Declaration has not been determined; Declarant shall have the right to amend this Section 15.1.4 at any time prior to the issuance of the first building permit on the Additional Real Estate for the purposes of establishing a maximum number of Units. All Units created on the Additional Real Estate shall be restricted exclusively to non-residential use.

15.1.5 The Units, Buildings and any other improvement created upon the Additional Real Estate will be compatible with the Units, Buildings and any other improvement which is initially a part of the Property, in terms of general architectural style, quality of construction, principal materials employed in construction; subject to market conditions and governmental and lender requirements.

15.1.6 All covenants and restrictions contained in this Declaration affecting the use, occupancy and alienation of Units shall apply to all Units created on the Additional Real Estate. The statements made in this Section 15.1 shall not apply to any Additional Real estate which is not added to the Property.

15.2 Rights to Relocate Boundaries or Subdivide. Declarant shall have the following rights and authority pursuant to Section 82.060 of the Act with respect to Units owned by it: (i) to relocate the boundaries of any Units; and (ii) to combine Units, or to subdivide or convert Units and create additional Units, Common Elements or Limited Common Elements therefrom. Other Owners shall have the right to create additional Units by the subdivision of any Unit owned by them in accordance with Section 82.060 of the Act.

## **SECTION 16 AMENDMENTS**

16.1 Approval Requirements. Except as otherwise provided herein, this Declaration may be amended only by the approval of:

16.1.1 Owners of Units to which are allocated at least fifty percent (50%) of the total votes in the Association; and

16.1.2 Declarant, when Declarant's approval is required pursuant to Section 14.8.

16.2 Procedures. Approval of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consent of the Declarant shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

## **SECTION 17 MISCELLANEOUS**

17.1 Severability. If any term, covenant, or provision of this instrument or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this Declaration or exhibits attached hereto.

17.2 Construction. Where applicable, the masculine gender of any word used herein shall mean the feminine or neutral gender, or vice versa, and the singular of any word used herein shall mean the plural, or vice versa. References to the Act, or any section thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable sections thereof. Any amendment to the Act shall retroactively apply to the Association and the Property, except as expressly prohibited or qualified by the Dedicatory Instruments.

17.3 Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant (i) written notice of such tender, (ii) written notice of the specific nature of the action, and (iii) an opportunity to defend against the action.

17.4 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board, the Association officers, or the Owners or Tenants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 of the Bylaws shall be effective upon receipt by the Association.

17.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the Bylaws and any Rules or Regulations, the Act shall control unless it permits one or more of the Dedicatory Instruments to control. As among the Declaration, the Bylaws and any Rules, the Declaration shall control, and as between the Bylaws and any Rules, the Bylaws shall control.

17.6 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be perpetual, subject only to termination as provided in this Declaration and the Act.

IN WITNESS WHEREOF, the undersigned has executed this instrument effective as of the 15 day of May, 2021 (the "Effective Date").

DECLARANT:

Katy Garage, LP  
a Texas limited partnership

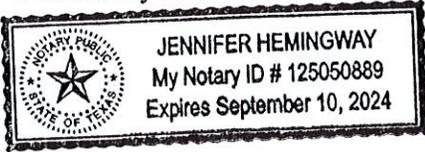
By: Garages of Texas @ Katy, LLC  
a Texas limited liability company  
its General Partner

  
\_\_\_\_\_  
Frederick A. Gans II  
Manager

STATE OF TEXAS        )  
                                  )  
COUNTY OF DALLAS    )

This instrument was acknowledged before me on the 15<sup>th</sup> day of May, 2021, by Fred Gans, Manager of Garages of Texas @ Katy, LLC, a Texas limited liability company, General Partner of Katy Garages, LP, a Texas limited partnership, on behalf of such limited liability company and limited partnership.

Witness my hand and official seal.



Jennifer Hemingway  
Notary Public  
My commission expires: September 10, 2024

After recording, please return to:

Garages of Texas @ Katy, LLC  
2323 Tarpley Road, Suite 100  
Carrollton, Texas 75006



**CONSENT OF MORTGAGEE**

The undersigned, being the sole owners and holders of the lien against the Property created by that certain Subordinate Deed of Trust, Rents, Security Agreement and Assignment of Rents, dated July 30, 2021, filed July 30, 2021, recorded in/under 2021127176 of the Official Public Records of Fort Bend County, Texas, securing a promissory note in the amount of \$300,000.00, dated May 4, 2021, executes this Declaration solely for the purpose of evidencing the consent required pursuant to Section 82.051(b) of the Texas Property Code. This Consent shall not be construed or operate as any release of lien or security interest owned and held by undersigned or any part thereof.

ERIC WILBUR



Eric Wilbur

STATE OF TEXAS                    §  
   §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me on this 7 day of OCTOBER, 2021, by Eric Wilbur.



Jennifer Hemingway  
Notary Public, State of Texas

Jennifer Hemingway  
Typed/Printed Name of Notary



**CONSENT OF MORTGAGEE**

The undersigned, being the sole owners and holders of the lien against the Property created by that certain Subordinate Deed of Trust, Rents, Security Agreement and Assignment of Rents, Filing dated July 30, 2021, filed July 30, 2021, recorded in/under 2021127176 of the Official Public Records of Fort Bend County, Texas, securing a promissory note in the amount of \$250,000.00, dated May 4, 2021, executes this Declaration solely for the purpose of evidencing the consent required pursuant to Section 82.051(b) of the Texas Property Code. This Consent shall not be construed or operate as any release of lien or security interest owned and held by undersigned or any part thereof.

INSIGNIA INV HOLDINGS, INC.

By: [Signature]  
Printed Name: Alpesh Desai  
Title: Owner

STATE OF Texas §  
COUNTY OF Harris §  
§

This instrument was acknowledged before me on this 12 day of October, 2021, by Alpesh Desai, President of Insignia Inv Holdings, Inc.



[Signature]  
Notary Public, State of Texas  
Maria Hintz  
Typed/Printed Name of Notary

Exhibit A

Schedule of Units

Allocated Interest of each Unit in Common Elements and Common Expenses; and in Votes  
(See Section 4 of this Declaration)

(\*Note: The Owner's Lounge is identified on the Plat as the Club House in Building C, and is shown in Plan elevations of Building C but is part of the Common Elements, and is not a Unit, and is not included in the calculation of the Allocated Interests of the Units)

The Association and Declarant specifically disclaim and do not warrant that the Units contain the exact square feet stated on the Plat.

Unit	Vote per Unit	Undivided Interest in Common Elements and Common Expenses %
<b>Building A</b>		
A1	1	1.369863
A2	1	1.369863
A3	1	1.369863
A4	1	1.369863
A5	1	1.369863
A6	1	1.369863
A7	1	1.369863
<b>Building B</b>		
B1	1	1.369863
B2	1	1.369863
B3	1	1.369863
B4	1	1.369863
B5	1	1.369863
B6	1	1.369863
B7	1	1.369863
B8	1	1.369863
B9	1	1.369863

Unit	Vote per Unit	Undivided Interest in Common Elements and Common Expenses %
B10	1	1.369863
B11	1	1.369863
B12	1	1.369863
B13	1	1.369863
B14	1	1.369863
B15	1	1.369863
B16	1	1.369863
<b>*Building C</b>		
C1	1	1.369863
C2	1	1.369863
C3	1	1.369863
C4	1	1.369863
C5	1	1.369863
C6	1	1.369863
C7	1	1.369863
C8	1	1.369863
C9	1	1.369863
C10	1	1.369863
C11	1	1.369863
C12	1	1.369863
C13	1	1.369863
C14	1	1.369863
<b>Building D</b>		
D1	1	1.369863
D2	1	1.369863
D3	1	1.369863
D4	1	1.369863
D5	1	1.369863
D6	1	1.369863
D7	1	1.369863
D8	1	1.369863

Unit	Vote per Unit	Undivided Interest in Common Elements and Common Expenses %
D9	1	1.369863
D10	1	1.369863
D11	1	1.369863
D12	1	1.369863
Building E		
E1	1	1.369863
E2	1	1.369863
E3	1	1.369863
E4	1	1.369863
E5	1	1.369863
E6	1	1.369863
E7	1	1.369863
E8	1	1.369863
E9	1	1.369863
E10	1	1.369863
Building F		
F1	1	1.369863
F2	1	1.369863
F3	1	1.369863
F4	1	1.369863
F5	1	1.369863
F6	1	1.369863
F7	1	1.369863
F8	1	1.369863
F9	1	1.369863
F10	1	1.369863
F11	1	1.369863
F12	1	1.369863
F13	1	1.369863
F14	1	1.369863
Total Units	73	99.999999%

Exhibit B

Property Description

Being all of RESERVE "A", in BLOCK 1, of WOODCREEK RESERVE FM 1463  
COMMERCIAL RESERVES SOUTH RESERVE "A3" REPLAT NO. 1, a Subdivision in Fort  
Bend County, Texas, according to the map or plat thereof recorded under Document 20190300,  
Plat Records, Fort Bend County, Texas.

Exhibit C

Additional Real Estate

NO ADDITIONAL REAL ESTATE

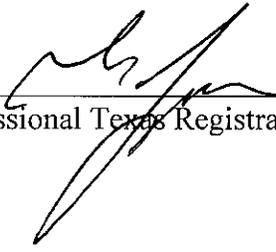
Exhibit D

Site Plan

(see attached page)

I certify that the Site Plan attached hereto as Exhibit D, showing boundaries and easements of the Garages of Texas @ Katy, a Condominium, contains all the information required under Section 82.059 of the Texas Property Code, as provided by the undersigned and not certified to elsewhere by others, and accurately shows the perimeter boundaries, public utility easements, together with the location of the Buildings in relation to the boundaries.

Signed this 20th day of January, 2021.

  
Professional Texas Registration No. 83296





