

BY-LAWS
OF
CLEAR WATER POINT HORIZONTAL PROPERTY REGIME

The following By-laws are hereby adopted to govern the affairs of CLEAR WATER POINT HORIZONTAL PROPERTY REGIME (hereby referred to as "the Project" or "the Regime") in conjunction with the covenants, restrictions and reservations set forth and contained in the Master Deed of said Regime.

ARTICLE I

DEFINITIONS: Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(a) "Unit" means an enclosed space consisting of one (1) or more floors or stories, having a direct exit to a thoroughfare or to a given common space leading to a thoroughfare, and described as a "Unit" in the Master Deed recorded herewith.

(b) "Owner or Co-Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, who owns, (1) legal title to a unit or, (2) who holds an equitable interest and is in possession of a unit.

(c) "Council of Co-Owners" means all the co-owners as defined in subsection (b) of Article I, but a majority, as defined in subsection (e) of Article I, shall constitute a quorum for the adoption of decisions.

(d) "General Common Elements" means and included:

(1) The land and all portion of the property not located within the area of any unit and easements owned by the Regime.

(2) The parking areas, storage sheds, and entrances and exits or communication ways.

(3) The gardens, roads, streets, and recreational facilities.

(4) The compartments or installations of central services, such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps and the like.

(5) The garbage incinerators and, in general, all devices or installations existing for common use.

(6) The sewer lines located on the land and easements owned by the Regime, subject to any easements reserved in favor of DKI CONSTRUCTION, LLC.

(7) All other elements of the Regime common or necessary to its existence, upkeep and safety.

(e) "Majority of Co-Owners" means fifty-one (51%) percent or more of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of Paragraph (4) of the Master Deed.

(f) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(g) "Property" means and includes the land, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto.

(h) All pronouns used herein include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

ARTICLE II

STATUS OF UNITS WITHIN REGIME: A unit in the Regime may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts, as if it were sole and entirely independent of the other units in the Regime of which it forms a part and the corresponding individual titles, and interest shall be recordable.

ARTICLE III

JOINT TENANCIES-TENANCIES IN COMMON-TENANCIES BY THE ENTIRETY: Any unit may be held and owned by more than one person as joint tenants, as tenants in common, as tenants by the entirety, or in any other real estate tenancy relationship recognized under the laws of Arkansas.

ARTICLE IV

OWNERSHIP OF UNITS-COMMON ELEMENTS-PERCENTAGE: A unit owner shall have the exclusive ownership of his unit and shall have a common right to a share, with the other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual unit, with relation to the value of the whole property. This percentage has been computed and is set forth in Paragraph 4 of the Master

Deed. Said percentage shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the units of the Regime. The said basic value shall not prevent each co-owner from fixing a different circumstantial value to his unit in all types of acts and contracts.

ARTICLE V

INDIVISIBILITY OF THE COMMON ELEMENTS: The common elements shall remain undivided and shall not be the object of an action for partition or division of the owners.

ARTICLE VI

USE OF THE ELEMENTS HELD IN COMMON: Each co-owner may use the elements held in common in accordance with the purposes for which they were intended, without hindering or encroaching upon the lawful rights of the other co-owners.

ARTICLE VII

COMMON ELEMENTS: Common elements shall mean all land and all portions of the property not located within any unit, and also includes, but not by way of limitation, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, (except such parts thereof as are located within the individual unit, and further excepting the house sewer to the main), entrance and exit or communication ways, parking areas, storage, sheds, yards, gardens, roads, streets, recreational facilities, installations of central services such as power, light, gas, refrigeration, reservoirs, water systems outside the buildings, sewer system (with exception as above set forth), garbage incinerator, and, in general, all devices or installations necessary or convenient to its existence, maintenance, and safety, or normally in common use.

ARTICLE VIII

WAIVER OF THE REGIME: By unanimous consent, all of the co-owners of the units in the Regime, or the sole owner, owning all of the units in the Regime, may waive this Regime and regroup or merge the records of the individual units with the principal property, provided, that the individual units are unencumbered or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

ARTICLE IX

CONTROL: The Regime shall be under the exclusive control and management of the Board of Administration at such time as DKI CONSTRUCTION, LLC, has sold 100% of the units in both Phases I and II or until the time that DKI CONSTRUCTION, LLC, voluntarily gives control of management to the Board of Administration, whichever occurs first. Until that time, DKI CONSTRUCTION, LLC, shall have exclusive control and management of the Regime as its Board of Administration.

ARTICLE X

NOTICE OF MEETING: The annual meeting of owners shall be held between July 1 and June 31 of each year. Notice of such meeting and of special meetings of the owners shall be given by certified mail to owner's address and shall be mailed out not less than ten (10) days nor more than fifteen (15) days prior to the date of such meeting.

ARTICLE XI

QUORUM: At such meetings, the President shall preside. The presence of any duly called meeting of owners having fifty-one (51%) percent or more of the basic value of the property as a whole shall constitute a quorum. Unless otherwise expressly provided in the law, the Master Deed and the By-Laws, any action may be taken at any meeting of the owners upon the affirmative vote of majority of the voting power of the co-owners present in person or by proxy and voting provided that a quorum is present as provided for above.

ARTICLE XII

REPORT: At the annual meeting the Board of Administration shall present an audit of the common expenses, itemizing receipts and disbursements for the preceding calendar year, the allocation thereof to each owner, and the estimated common expenses for the coming calendar year. Within ten (10) days after the annual meeting said statement shall be delivered to the owners not present at said meeting.

ARTICLE XIII

SPECIAL MEETINGS: Special meeting of the owners may be called at any time for the purpose of considering matters which, by the terms of these By-Laws or the Master Deed, require the approval of all or some of the owners, or for any other reasonable purpose. Said meeting shall be called by written notice, signed by a majority of the board of Administration, or by the owners having one-third (1/3) of the total votes and mailed not less than ten (10) days nor more than fifteen (15) days prior to the date fixed for said

meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered there at.

ARTICLE XIV

ELECTION AND PROCEEDINGS OF THE BOARD OF ADMINISTRATION:

(a) **Election:** At each annual meeting, the owners shall elect a Board of Administration for the forthcoming year, consisting of five (5) owners; provided, however, that the first Board of Administration elected hereunder may be elected at a special meeting duly called, said Board of Administration to serve until the first annual meeting held thereafter. Every owner entitled to vote at any election of members of the Board of Administration may cumulate his votes and give one candidate a number of votes equal to the number of members of the Board of Administration to be elected, multiplied by the number of votes to which such owner is otherwise entitled, or distribute his votes on the same principle among as many candidates as he thinks fit. The candidates receiving the highest number of votes up to the number of members of the Board of Administration to be elected shall be deemed elected.

(b) **Term:** Members of the Board of Administration shall serve for a term of two (2) years; provided that two (2) of the five (5) members of such Board of Administration elected shall serve for a one (1) year term; the other three (3) shall serve for a two (2) year term, such terms to be determined by lot. the members of the Board of Administration shall serve until their respective successors are elected, or until their death, resignation or removal; provided that if any member ceases to be an owner, his membership on the Board of Administration shall thereupon terminate.

(c) **Resignation and Removal:** Any member may resign at any time by giving written notice to the Board of Administration, and any member may be removed from membership on the Board of Administration by vote of the owners owning not less than seventy-five (75%) percent of the basic value of the property. Any vacancy on the Board of Administration will be filled by a majority vote of the remaining members of the Board of Administration, such individual shall serve until the next annual meeting of the owners, at which time a member shall be elected to serve for the remainder of the unexpired term of such member of the Board of Administration.

(d) **Proceedings:** Three (3) members of the Board of Administration shall constitute a quorum and, if a quorum is present the decision of a majority of those present shall be the act of the Board of Administration. The Board of Administration shall elect a President, who shall preside over both its meetings and those of the owners. Meetings of the Board of Administration may be called, held and conducted in accordance with such regulations as

the Board of Administration may adopt. The Board of Administration may also act without a meeting by unanimous written consent of its members.

(e) Notice of Election: After the first election of the Board of Administration, DKI CONSTRUCTION, LLC, shall execute, acknowledge and record an affidavit stating the names of all of the persons elected to membership on the Board of Administration. Thereafter, three (3) persons who are designated of record as being members of the most recent Board of Administration (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Board of Administration. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Board of Administration and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

ARTICLE XV

AUTHORITY OF THE BOARD OF ADMINISTRATION: The Board of Administration, for the benefit of the units and the owners, shall enforce the provisions hereof and shall acquire and shall pay for out of the common expense fund hereinafter provided for, the following:

(a) Water, sewer, garbage collection, electrical, telephone and gas and other necessary utility service for the common elements (and to the extent not separately metered or charged for the units).

(b) A policy or policies of fire insurance as the same are more fully set forth in Article XXX of these By-Laws, with extended coverage endorsement, for the full insurable replacement value of the units and common elements, payable as provided in Article XXX, or such other fire and casualty insurance as the Board of Administration shall determine gives substantially equal or greater protection to the owners, and their mortgagees as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgage or mortgagees of each unit, if any.

(c) A policy or policies as the same are more fully set forth in Article XXX of these By-Laws insuring the Board of Administration and the owners against any liability to the public or to the owners (of units and of the common elements, and their invitees, or tenants) incident to the ownership and/or use of the project, and including the personal liability exposure of the owners. Limits of liability under such insurance shall not be less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars for any one person injured, for any one accident, and shall not be less than One Hundred Thousand and no/100 (\$100,000.00) Dollars for property damage each occurrence (such limits and coverage to be

CLEAR WATER POINT By-laws

Page 7

reviewed at least annually by the Board of Administration and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(d) Workmen's Compensation Insurance to the extent necessary to comply with the applicable laws.

(e) The services of a person or firm to manage its affairs (herein called "The Manager") to the extent deemed advisable by the Board of Administration as well as such other personnel are employed directly by the Board of Administration or are furnished by the Manager.

(f) Legal and accounting services necessary or proper in the operation of the common elements or the enforcement of these By-Laws.

(g) Painting, maintenance, repair and all landscaping of the common elements, and such furnishing and equipment for the common elements as the Board of Administration shall determine are necessary and proper, and the Board of Administration shall have the exclusive rights and duty to acquire the same for the common elements; provided, however, that the interior and exterior surfaces of each unit shall be painted, maintained and repaired by the owners thereof, all such maintenance to be at the sole cost and expense of the particular owner.

(h) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board of Administration is required to secure or pay for pursuant to the terms of these By-Laws, the Master Deed or by law or which in its opinion shall be necessary or proper, for the operation of the common elements or for the enforcement of these By-Laws, provided that if any such materials, supplies, labor, services, maintenance, repairs structural alterations, insurance, taxes or assessments are provided for a particular unit, the cost thereof shall be specifically assessed to the owners of such unit.

(i) Maintenance and repair of any unit, if such maintenance or repair is reasonably necessary in the discretion of the Board of Administration to protect the common elements or preserve the appearance and value of the project, and the owners of said unit have failed and refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board of Administration to said owners, provided that the Board of Administration shall levy a special assessment against the unit of such owners for the cost of said maintenance or repair.

(j) The Board of Administration's power hereinabove enumerated shall be limited in that the Board of Administration shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of replacing portions of the common elements, subject to all the provisions of these By-Laws) having a cost in excess of Five Thousand and No/100 (\$5,000.00) Dollars except as expressly provided herein.

(k) The power, rights and authorities of the Board of Administration to fix and make assessments to hire a manager and other personnel and in general to arrange and provide for the care, upkeep, maintenance and operation of the common elements and the lawns of each unit may be exercised by DKI CONSTRUCTION, LLC, until such time as 100% of the units described herein as Phases I and II and in the Master Deed filed herewith have been sold and title transferred to the initial owner or until it transfers such powers, right and authority to a Board of Administration.

ARTICLE XVI

BOARD OF ADMINISTRATION POWERS, EXCLUSIVE: The Board of Administration shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the common expense fund.

ARTICLE XVII

ALTERATIONS, ADDITIONS AND IMPROVEMENTS OF COMMON ELEMENTS: There shall be no structural alterations, capital additions to , or capital improvements of the common elements requiring an expenditure in excess of Five Thousand and no/100 (\$5,000.00) Dollars without the prior approval by vote of owners owning not less than a majority of the basic value of the property.

ARTICLE XVIII

COMMON EXPENSES-ASSESSMENTS:

(a) Within thirty (30) days prior to the beginning of each calendar year the Board of Administration shall estimate the net charges to be paid during such year including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior years' fund. Said "estimated cash requirement" shall be assessed to the owners pursuant to the percentages set forth in Paragraph 4 of the Master Deed. Payment of said common expenses shall commence as of the date of purchase by the owner. DKI CONSTRUCTION, LLC, will not be liable for the amount of any assessment against completed units owned by it. If said sum estimated proves inadequate for any reason,

including nonpayment of any owner's assessment, the Board of Administration may, at any time, levy a further assessment, which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board of Administration in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board of Administration shall designate.

(b) All funds collected hereunder shall be expended for the purpose designated herein.

(c) The omission by the Board of Administration, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of these By-Laws, or a release of the owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this paragraph shall be effective only upon unanimous written consent of the owners and their mortgagees. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

(d) The Board of Administration shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expense incurred. Records and vouchers authorizing the payments involved shall be available for examination by the owners at convenient hours of week days.

ARTICLE XIX

DEFAULT IN PAYMENT OF ASSESSMENTS: Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the owner of any unit, plus interest at the rate of ten (10%) percent per annum, costs and a reasonable attorney's fee shall become a lien upon such unit upon recordation of a notice of assessment. the said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(a) Assessment liens and charges for taxes past due and unpaid on the units.

(b) Payments due under mortgage instruments of encumbrances duly recorded prior to the date such notice is recorded. A certificate executed and acknowledged by a majority of the Board of Administration stating the indebtedness secured by the lien upon any unit created hereunder, shall be conclusive upon the Board of Administration and the owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of any unit upon request at a reasonable fee, not to exceed Ten and no/100 (\$10.00) Dollars. Unless the request for a certificate of indebtedness shall be complied with within ten (10) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a unit may pay any unpaid common expense payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrancers. Upon payment of delinquent assessment concerning which, such a certificate has been recorded, or other satisfaction thereof, the Board of Administration shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate, stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale by the Board of Administration, such sale to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the owner shall be required to pay the costs and expense of such proceedings and a reasonable attorney's fee. The Board of Administration shall have the power to bid on the unit at the foreclosure or other sale and to hold, lease, mortgage and convey the unit.

ARTICLE XX

MORTGAGE PROTECTION: Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded prior mortgage upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Article XIX hereof on the interest of the purchase at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as any owner after the date of such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as any owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join the execution thereof.

(c) By subordination agreement executed by a majority of the Board of Administration, the benefits of (a) and (b) above may be extended to mortgages not otherwise entitled thereto.

ARTICLE XXI

DELEGATION TO MANAGER: The Board of Administration may delegate any of its duties, powers or functions, including, but not limited to, the authority to give the certificates provided for in Article XX hereof, to any person or firm, to act as Manager of the project, provided that any such delegation shall be revocable upon notice by the Board of Administration. The members of the Board of Administration shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board of Administration. Any Manager employed by DKI CONSTRUCTION, LLC, shall be employed to manage only until the completion and sale of 100% of the units in Phases I and II or until said time as it voluntarily relinquishes control to the Board of Administration, at which time, the new Board of Administration shall have the right to retain or discharge said Manager as it determines desirable in its discretion.

ARTICLE XXII

EXCLUSIVE OWNERSHIP AND POSSESSION BY OWNER: Each owner shall be entitled to exclusive ownership and possession of his unit. Each owner shall be entitled to an undivided interest in the common elements in the percentage expressed in Paragraph 4 of the Master Deed. The percentage of the undivided interest of each owner in the common elements as expressed Paragraph 4 of the Master Deed shall have a permanent character, and shall not be altered in any other manner without the consent of all owners expressed in Amended By-Laws or Master Deed duly recorded. The percentage of the undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instruments. Each owner may use the common elements in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners. Owners shall not be deemed to own the utilities running through his unit, which are utilized for, or serve more than one unit, except as a tenant in common with the other owner. An owner, however, shall be deemed to own and shall have the exclusive

right to paint, repaint, tile, wallpaper or otherwise refinish and decorate the inner surfaces of the walls, windows, and doors bounding his unit.

ARTICLE XXIII

OWNERS OBLIGATION TO REPAIR: Except for those portions which the Board of Administration is required to maintain and repair hereunder (if any), each owner shall at the owner's expense keep the interior and exterior of his unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecoration, painting and varnishing which may at the time be necessary to maintain the good appearance and condition of his unit. In addition to the decorating and keeping the interior and exterior of the unit in good repair, the owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures, refrigerators, air conditioning equipment, dishwashers, disposals or ranges that may be in, or connected with the unit. The Board of Administration shall not be responsible to the owner for loss or damage by theft or otherwise of articles which may be stored by the owner on the premises.

The owner shall promptly discharge any lien which may hereafter be filed against his unit and shall otherwise abide by the provisions of Act 60 of 1961 of the General Assembly of the State of Arkansas, as amended.

ARTICLE XXIV

PROHIBITION AGAINST STRUCTURAL CHANGES BY OWNER: The owner shall not, without first obtaining written consent of the Board of Administration, make or permit to be made any structural alteration, improvement or addition in or to his unit or in or to the exterior of the unit or common elements. The owner shall do no act nor any work that will impair the structural soundness or integrity of the unit or safety of the property or impair any easement or hereditament without the written consent of all owners. The owner shall not paint or decorate any portion of the common elements, without first obtaining written consent of the Board of Administration.

ARTICLE XXV

LIMITATION ON USE OF UNITS AND COMMON ELEMENTS: The units and common elements shall be occupied and used as follows:

(a) No owner shall occupy or use his unit or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the

owner's family or the owner's lessees or guests. Nothing herein shall be construed so as to prevent owners from leasing their unit for any time period desired.

(b) There shall be no obstruction of the common elements. Nothing shall be stored in the common elements without the prior consent of the Board of Administration.

(c) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance on the common elements, without the prior written consent of the Board of Administration. No owner shall permit anything to be done or kept in his unit or in the common elements which will result in the cancellation of insurance on any unit or any part of the common elements or which would be in violation of any law. No waste will be committed to the public view on or from any unit or the common elements or which would be in violation of any law. No waste will be committed in the common elements.

(d) No sign of any kind shall be displayed to the public view on or from any unit or the common elements, without the prior consent of the Board of Administration.

(e) No animals, livestock or poultry of any kind shall be raised, bred, kept in any unit or in the common elements, except dogs, cats or other household pets may be kept in unit, subject to rules and regulations adopted by the Board of Administration.

(f) No noxious or offensive activity shall be carried on in any unit or in the common elements, nor shall anything be done therein which may be or become annoyance or nuisance to the other owners.

(g) Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Board of Administration.

(h) There shall be no violation of rules for the use of the common elements adopted by the Board of Administration and furnished in writing to the owners, and the Board of Administration is authorized to adopt such rules.

(i) No clothes, or similar items, shall be hung or places outside exposed to public view on or from any unit or the common elements.

ARTICLE XXVI

ENTRY FOR REPAIRS: The Board of Administration or its guests may enter any unit when necessary in connection with any maintenance, landscaping or construction for which the Board of Administration is responsible. Such entry shall be made with as little

inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Board of Administration out of the common expense fund.

ARTICLE XXVII

FAILURE OF BOARD OF ADMINISTRATION TO INSIST ON STRICT PERFORMANCE NO WAIVER: The failure of the Board of Administration to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of these By-Laws, or to exercise any right or option herein contained, or to serve any notice or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenants, conditions and restrictions shall remain in full force and effect. The receipt by the Board of Administration of any assessment from an owner, with the knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of Administration of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Administration.

ARTICLE XXVIII

LIMITATION OF BOARD OF ADMINISTRATION: The Board of Administration shall not be liable for any failure of water supply or other service to be obtained and paid for by the Board of Administration hereunder, or for injury or damage to person or property caused by the elements or by another owner or person in the project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside, or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place unless caused by gross negligence of the Board of Administration. No diminution or abatement or common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements or from any action taken to comply with any law, ordinance or orders of a governmental authority.

ARTICLE XXIX

INDEMNIFICATION OF BOARD OF ADMINISTRATION: Each member of the Board of Administration shall be indemnified by the owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board of Administration, or any settlement thereof, whether or not he is a member of the Board of Administration at the time such expenses are incurred, except in such cases wherein the member of the Board of

Administration is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, provided, that, in the event of a settlement, the indemnification shall apply only when the Board of Administration approves such settlement and reimbursements as being for the best interest of the Board of Administration.

ARTICLE XXX

INSURANCE: The Board of Administration shall obtain and maintain at all times insurance of the type and kind and in at least the amounts provided hereinabove, and including insurance for such other risks as the Board of Administration shall reasonably determine, such insurance shall be governed by the following provisions:

- (a) All policies shall be written by a company licensed to do business in the State of Arkansas and holding a rating of "AAA" or better by Best's Insurance Reports.
- (b) Exclusive authority to adjust losses under policies hereafter in force in the project shall be vested in the Board of Administration or its authorized representatives.
- (c) In no event shall the insurance coverage obtained and maintained by the Board of Administration hereunder, be brought into contribution with insurance purchased by individual owners or their mortgagees.
- (d) Each owner may obtain additional insurance at his own expense; provided, however, that no owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Administration, in behalf of all of the owners, may realize under any insurance policy which the Board of Administration may have in force on the project at any particular time.
- (e) Each owner shall be required to notify the Board of Administration of all improvements made by the owner to his unit, the value of which is in excess of One Thousand and no/100 (\$1,000.00) Dollars.
- (f) Any owner who obtains individual insurance policies covering any portion of the project other than personal property belonging to such owner, shall be required to file a copy of such individual policy or policies with the Board of Administration within thirty (30) days after purchase of such insurance.
- (g) The Board of Administration shall be required to make every effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Board of Administration, the owners and their respective servants, agents and guests.

(2) That any "no other insurance" clause in the master policy exclude individual owners' policies from consideration.

(h) The annual insurance review which the Board of Administration is required to conduct, as provided in Article XV above shall include an appraisal of the improvements in the project by a representative of the insurance carrier writing the master policy.

ARTICLE XXXI

NO PARTITION: There shall be no judicial partition of the project or any part thereof, nor shall any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Article XXXII hereof in the case of damage or destruction or unless the property has been removed from the provisions of Act 60 of 1961 of the General Assembly of the State of Arkansas, as amended, provided, however, that if any unit shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other unit.

ARTICLE XXXII

DAMAGE AND DESTRUCTION: In case of fire, casualty or any other disaster the insurance proceeds, if sufficient to reconstruct the units, shall be applied to such reconstruction. Reconstruction of the units, as used in this paragraph, means restoring the unit to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished by the Board of Administration. If the insurance proceeds are insufficient to reconstruct the unit, damage to or destruction of the unit shall be promptly repaired and restored by the Board of Administration, using proceeds of insurance, if any, on the units for that purpose, and the unit owners shall be liable for assessment for any deficiency. However, if three-fourths (3/4) or more of the units are destroyed or substantially damaged and if the owners, by a vote of at least three-fourths (3/4) of the voting power, do not voluntarily, within one hundred (100) days after such destruction or damage, make provisions for reconstruction, the Board of Administration shall record, with the County Recorder, a notice setting forth such facts, and upon the recording of such notice:

(a) The property shall be deemed to be owned in common by the owners.

(b) The undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by such owner in the common elements.

(c) Any lien affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the owner in the property.

(d) The property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the owners in a percentage equal to the percentage of undivided interest owned by each owner in the common elements, after first paying out of the respective shares of the owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each owner.

ARTICLE XXXIII

ENFORCEMENT: Each owner shall comply strictly with the provisions of these By-Laws and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decisions adopted pursuant to said By-Laws and administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Administration on behalf of the owners, or in a proper case, by an aggrieved owner.

ARTICLE XXXIV

PERSONAL PROPERTY: The Board of Administration may acquire and hold, for the benefit of the owners, tangible and intangible personal property and may dispose of the same by sale or other wise, and the beneficial interest in such personal property shall be owned by the owners in the same proportions as their respective interest in the common elements, and shall not be transferable except with a transfer of a unit. A transfer of a unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property. Within thirty (30) days following the recording of these By-Laws, DKI CONSTRUCTION, LLC, shall execute and deliver a bill of sale to the Board of Administration in behalf of all the owners, transferring all items of personal property located on the project and furnished by him, which property is intended for the common use and enjoyment of the owners.

ARTICLE XXXV

AUDIT: Any owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the Board of Administration. The Board of Administration, at the expense of the common expenses, shall obtain an audit of all books and records pertaining to the project at no greater than annual intervals and furnish copies thereof to the owners.

ARTICLE XXXVI

INTERPRETATION: The provisions of these By-Laws shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Regime. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

ARTICLE XXXVII

AMENDMENT: Except as otherwise provided herein, the provisions of these By-Laws may be amended by an instrument in writing signed and acknowledged by record owners holding seventy-five (75%) percent of the basic value of the property, which amendment shall be effective upon recordation in the office of the Recorder of Deeds and Mortgages of Garland County, State of Arkansas. No amendment shall be made to these By-laws which would prevent owners from leasing their units except by an instrument in writing signed and acknowledged by record owners holding one hundred percent (100%) of the basic value of the property.

ARTICLE XXXVIII

SEVERABILITY: The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision thereof.

ARTICLE XXXIX

In the matters of procedure not covered by these By-Laws, Robert's Rules of Order shall be followed.

ARTICLE XXXX

EFFECTIVE DATE: These By-Laws shall take effect upon recording.

EXECUTED at Hot Springs, Arkansas, on this 30th day of November, 2005.

DKI CONSTRUCTION, LLC

BY: 
DANNY DeLAHOUSSAYE,
~~MANAGING~~ MEMBER

By 
Timothy E. Noonan, Member

STATE OF ARKANSAS

ACKNOWLEDGMENT

COUNTY OF GARLAND

On this 30th day of November, ~~2003~~²⁰⁰⁵, before the undersigned, a Notary Public, duly commission, qualified and acting, within and for the County and State aforesaid, appeared in person the within named DANNY DeLAHOUSSAYE, to me personally well known, who stated and acknowledged that he was the ~~Managing~~ Member of DKI CONSTRUCTION, LLC, and had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 30th day of November, 2005.

NOTARY PUBLIC

My Commission Expires:
