

DECLARATION FOR ESTABLISHMENT

OF CONDOMINIUM REGIME

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For the purpose of establishing a condominium regime subject to the provisions of Vernon's Annotated Civil Statutes of the State of Texas, Article 1301a, hereinafter referred to as the Condominium Act, LoBue and Associates, a Limited Partnership, herein called "Developer", for itself, its successors, grantees and assigns, hereby makes this Declaration establishing the property hereinafter described as a Condominium Regime, and for such purpose, Developer does hereby make the declarations hereinafter set forth, and Developer hereby submits the following described land, together with all buildings and improvements thereon erected, or to be erected and completed, to the condominium form of ownership in accordance with the provisions of the Condominium Act and the provisions of this declaration hereinafter set forth. The description of such land so submitted and dedicated is as follows:

Overlook Villa, Plat One, as recorded in Volume 60,
Page 52, of the Plat Records of Travis County, Texas.

DEFINITIONS

1.1 General: All terms defined in the Condominium Act are used herein in the sense and meaning so defined except as limited, substituted or amplified as set forth herein.

1.2 Apartment shall mean an enclosed space in a building consisting of a suite of rooms designed for independent use as a housing accommodation and designated on the plat of the project as a separate apartment, with an appurtenant garage and storage area, and provided to be owned individually by person or persons and not owned in common with the other owners of the project.

1.3 Board or Board of Governors refers to the board of directors of the Council of Co-owners, which board shall manage the affairs of the Council.

1.4 Bylaws shall be deemed to include the articles of incorporation and bylaws of the Council as a nonprofit corporation, and the

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72-9710
bylaws or other governing rules adopted by the Council as an unincorporated association.

1.5 Common Expenses means the expenses of the project and operation thereof to be borne and shared in common by all of the apartment owners proportionately as set forth herein.

1.6 Common Fund shall consist of all funds of all apartment owners collectively administered by the Council.

1.7 Developer shall mean LoBue and Associates which has made and executed this Condominium Declaration and is the owner of the property submitted to it.

1.8 General Common Elements means all parts of the real property which are not owned separately and which are owned in common including, but not limited to the items specifically designated as such in this Declaration, together with such other property as shall be designated as such from time to time by written instruments recorded in the Condominium Records of Travis County, Texas, signed by the Council and by the owner of the property so designated.

1.9 Real Property shall mean all of the real property described above and all improvements constructed or to be constructed thereon.

NAME, DEVELOPMENT PLAN AND DESCRIPTION

2.1 Name: The real property shall have the name Overlook Villa West.

2.2 Development Plan: The condominium is described and established as follows:

(a) Survey. A survey of the land above described, showing the location thereon of the apartment buildings and apartments therein, is attached hereto as Exhibit A.

(b) Apartment Diagrams. Diagrams of each apartment are attached hereto as Exhibits B-1 through B-30.

(c) Easements. Easements are reserved through the real property as may be required for utility services in order to adequately serve the project; provided, however, such easements through an apartment or garage space shall be only according to the plans and specifica-

72-9711

tions for the building containing the apartment, or as the building is constructed, unless otherwise approved in writing by the apartment owner.

(d) Improvements upon the land include the following:

(1) Apartments - The Condominium includes three apartment buildings which are designated as buildings A, B and C, containing a total of thirty (30) apartments. The location of these buildings, the apartments therein and the area they comprise are shown on Exhibit A. Each apartment is diagrammed in Exhibits B-1 through B-30.

(2) Other Improvements - The project includes automobile parking areas, landscaping, walkways and other common improvements, all of which shall be general common elements. There are no limited common elements.

2.3 Apartments. Each of the individual apartments shall include the following:

(a) The boundaries of each such apartment space shall be and are the interior surfaces of the perimeter walls, floors, and ceilings of the living area, and shall also include the interior construction, interior dividing walls, partitions, appliances, fixtures, improvements and patio, porch or balcony which are intended to exclusively serve such apartment space, such as interior rooms, walls, floor and ceiling covering or finish, closets, cabinets, shelving, individual bathroom and kitchen fixtures, separate items or furnishings belonging exclusively to such space which may be removed, replaced, disposed of or otherwise treated without affecting any other apartment space, or the ownership, use or enjoyment thereof; and the space includes both the portions so described, the land thereunder, and the area space so encompassed, excepting the common elements: the location and number of each apartment is shown on Exhibit A.

(b) The boundaries of each individual garage and storage area shall be and are the interior surfaces of the perimeter walls, floors

or ground surface, ceilings and storage areas adjacent thereto, and the separate ownership shall include the land thereunder and the area space so encompassed, excepting the common elements; the location and number of each individual garage and storage area are shown in Exhibits B-1 through B-30. 72-9712

2.4 General Common Elements. The general common elements consist of the entire real property including all clusters and buildings or parts of buildings, other than the apartments and the limited common elements, if any, and including, without limitation, the following:

- (a) The land above described.
- (b) The foundations, pilings, bearing walls and columns, roofs, landscaping and gardens, and all other like elements.
- (c) The parking areas, driveways, and walkways.
- (d) The Common Fund.
- (e) All other apparatus and installations existing in or to the buildings or on the property, for the common use, or necessary or convenient to the existence, maintenance or safety of the property.

2.5 Condominium Unit. A condominium unit shall include the ownership of an apartment and certain interests which are appurtenant to the apartment including, but not limited to, the following items:

- (a) General Common Elements. The ownership of an undivided one-thirtieth (1/30) share in the general common elements as above described.
- (b) A membership in the Council and an undivided one-thirtieth (1/30) interest in the funds and assets held by the Council.

2.6 Utility Easements. Each owner shall have an easement in all pipes, wires, ducts, cables, conduits, public utility lines and other general common elements located in whole or in part in any of the other apartments or common areas but serving his apartment. Each apartment shall be subject to an easement in favor of the owners of all other apartments to use the pipes, ducts, cables, wires, conduits,

public utility lines and other general common elements serving such other apartments but located in such apartment.

72-9713

2.7 Restrictions, Covenants and Conditions. The purchase and ownership of each apartment and appurtenances thereto is subject to all provisions of this Declaration and to the articles of incorporation by the Council of Co-owners, if any, the bylaws and rules and regulations, and to the restrictions, covenants, conditions, right of ways, easements, oil, gas and mineral leases and all outstanding royalty and mineral interests applicable to or affecting the property hereinabove described and recorded in the office of the County Clerk of Travis County, Texas or the General Land office of the State of Texas.

2.8 Encroachments. If any portion of the general or limited common elements encroaches upon any apartment or if any apartment encroaches upon any other apartment or upon any portion of the general or limited common elements, as a result of the construction of the building or if any such encroachment shall occur thereafter as a result of settling or shifting of the building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building shall stand. In the event the improvements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, encroachment of part of the general or limited common elements upon any apartment or of any apartment upon any other apartment or upon any portion of the general or limited common elements due to such rebuilding shall be permitted and valid easements for such encroachments and maintenance thereof shall exist so long as the building shall stand.

2.9 Access. The Board shall have the right of access to each apartment to inspect the same and to remove violations therefrom and to maintain, repair and replace the general or limited common elements contained therein or elsewhere in the building.

COUNCIL OF CO-OWNERS

3.1 Council. Overlook Villa West shall be governed by and the

common elements shall be administered by a Council of Co-Owners, (hereinafter called "Council") which is hereby established as a membership association. The Council shall act for the benefit of all apartment owners to provide for the protection, preservation, maintenance and repair of the general and limited common elements, and the government, operation and administration of the project property as hereby established and shall administer the Common Fund. Such Council and its affairs shall be administered and managed by a Board of Governors elected by the members of the Council. 72-9714

3.2 Incorporation. The Council of Co-Owners shall be incorporated (under the name "Overlook Villa West Council of Co-Owners, Inc." or such other name as the board shall select) as a membership corporation under the provisions of the Texas Nonprofit Corporation Act; but it shall subsequently be operated as an unincorporated membership association if the corporation shall at any time be dissolved in a manner provided by law. The affairs of the Council, whether or not incorporated, shall be governed by the provisions of this Declaration, the Articles of Incorporation (if incorporated) and the bylaws adopted by the board. The project shall be subject to and governed by such instruments and by such rules and regulations as shall be adopted and published by the board of directors from time to time.

3.3 Directors. The Board of Governors of the Council shall consist of the number of directors specified in the Articles of Incorporation and Bylaws of the Council. A majority of the Board shall at all times be persons directly or indirectly owning or having an ownership interest in an apartment. Such board shall have the powers, duties, authority, and responsibility specified in the bylaws of the Council. The initial Board of the Council shall be the persons designated in the Articles of Incorporation of the Council or appointed by the Developer and need not be persons having an ownership interest in an apartment. The first meeting of the Council of Co-Owners shall be held within thirty (30) days after the Developer has sold and conveyed title to all of the units of the Condominium regime established hereby, at which time the Board of

Governors designated by the Developer shall resign and the members of the Council shall elect a new Board of Governors. If the Developer so elects, it may relinquish control and accelerate the date of this first meeting.

72-9715

3.4 Membership, Council of Co-Owners: Each owner of an apartment, including Developer if, and so long as, Developer owns an apartment, shall automatically be a member of the Council. Each owner shall remain a member of the Council until such time as he ceases to own an apartment, at which time his membership shall automatically cease. Upon any transfer of ownership of any apartment, the new apartment owner shall succeed to such membership in the Council.

3.5 Bylaws. The Articles of Incorporation and Bylaws adopted by the Developer as sole owner of the real property and sole member of the Council, which shall be used for the purpose of organizing the Council corporation are attached hereto as Exhibit C and made a part hereof. The Articles of Incorporation and Bylaws may be amended from time to time in the manner therein provided or as provided by law.

3.6 Voting Rights. The owner or owners of each apartment or his legally authorized representative and proxy shall be entitled to cast one vote for each apartment owned at all meetings of the Council. Voting rights attributable to any apartment which shall have been acquired by the Council shall, while owned by the Council, be entitled to be represented at meetings of the members of the Council for purposes of determining the existence of a quorum, and shall be exercised and voted as directed by a majority of the members voting at such meeting.

DUTIES OF COUNCIL AND OWNERS

4.1 Maintenance, Alteration and Improvement. Responsibility for the maintenance of the real property and restrictions upon the alteration and improvement thereof, shall be as follows:

(a) Apartments.

(1) By the Council. The Council shall maintain, repair and replace at the expense of the co-owners through the Common Fund:

i. All portions of an apartment (except interior surfaces) contributing to the support of the apartment building, which portions shall include, but not be limited to, the outside walls of the apartment building and all fixtures on the exterior thereof, boundary walls of apartments, floor, roofs and ceiling slabs, load-bearing columns, piling and load-bearing walls. 72-9716

ii. All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of an apartment maintained by the Council; and all such facilities contained within an apartment which service part or parts of the project other than the apartment within which contained.

iii. All incidental damage caused to an apartment by such work.

iv. Exterior doors and windows of an apartment.

(2) By the Apartment Owner. The responsibility of the apartment owner shall be as follows:

i. To maintain, repair and replace at his expense all portions of his apartment except the portions to be maintained, repaired and replaced by the Council. Such shall be done without disturbing the rights of other apartment owners.

ii. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building.

iii. Promptly to report to the Council any defect or need for repairs, the responsibility for the remedying of which is that of the Council.

iv. The cost of all repairs to a general or limited common element necessitated by the negligence, misuse or neglect by an apartment owner.

(3) Alteration and Improvement. Neither an apartment owner nor the Council shall make any alterations in the portions of an apartment or building which are to be maintained by the

Council, or remove any portion thereof, or make any additions thereto, or do any thing which would jeopardize the safety or soundness of the building, or impair any easement, without 72-9717, first obtaining approval in writing of owners of all other apartments in the same building and the approval of the Board of Directors of the Council. A copy of detailed plans for all of such work shall also be filed with the Council prior to the start of the work.

(b) General and Limited Common Elements.

(1) By the Council. The maintenance and operation of the general and limited common elements shall be the responsibility of the Council at the expense of the co-owners through the common fund.

(2) Alteration and Improvement of General Common Elements.

There shall be no alteration nor further improvement of general common elements without prior approval of the members of the Council by vote of a majority or such greater number as shall be specified in the Council bylaws. Improvement of the general common elements shall, moreover, be subject to such restrictions and provisions, if any, as shall be set forth in the bylaws.

4.2 Utilities: Each owner of an apartment shall be individually responsible for and shall pay for all telephone, electricity and all other utilities services furnished to his apartment which are separately metered or billed by the respective utility companies or other party furnishing same. Utilities which are not separately metered or billed to the individual apartments shall be a part of the common expenses, and each apartment owner shall pay his pro rata part thereof as in the case of other common expenses.

4.3 Insurance. The insurance other than title insurance which shall be carried upon the Condominium Property and the property of the unit owners shall be governed by the following provisions:

(a) Authority to Purchase. All insurance policies upon the Condominium Property shall be purchased by the Board for the benefit of the Council and the unit owners and their mortgagees as their interests may appear, and provision shall be made for the

issuance of certificates of mortgage endorsements to the mortgagees of units. Such policies and endorsements thereon shall be deposited with the Insurance Trustee. Unit owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

72-9718

(b) Coverage. Types of insurance coverage shall include the following:

(1) Casualty. All buildings and improvements upon the land and all personal property included in the common elements shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined biannually by the Board of Directors of the Council. Such coverage shall afford protection against:

- i. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and
- ii. Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including, but not limited to vandalism and malicious mischief.

(2) Public Liability. Public Liability in such amounts and with such coverage as shall be required by the Board of Directors of the Council, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(3) Workmen's Compensation. Workmen's Compensation policy to meet the requirement of law.

(4) General. Such other insurance as the Board of Directors of the Council shall determine from time to time to be desirable.

(c) Premiums. Premiums upon insurance policies purchased by the Board shall be paid by the Board as a common expense.

(d) Insurance Trustee. All insurance policies purchased by the Board shall be for the benefit of the Council and the unit owners and their mortgagees as their interests may appear, and shall provide that proceeds in excess of \$10,000.00 covering property

losses shall be paid to an institution possessing trust powers as may be approved by the Board of Directors of the Council, which Trustee is herein referred to as the "Insurance Trustee". The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the unit owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

(1) Common Elements. Proceeds on account of damage to common elements - an undivided share for each unit owner, such share being the same as the undivided share in the common elements appurtenant to his unit.

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

i. When a Building is to be Restored -----
for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Board.

ii. When a Building is Not to be Restored ----
an undivided share for each unit owner, such share being in the proportion the square footage of each unit bears to the square footage of all the units in the building.

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

(e) Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.

(2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by such mortgagees.

72-9720

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by such mortgagees.

(4) Certificate. In making distribution to unit owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Board as to the names of the unit owners and their respective shares of the distribution.

4.4 Board as Agent. The Board is hereby irrevocably appointed agent for each unit owner and for each owner of a mortgage or other lien upon a unit and for each owner of any other interest in the Condominium property to adjust all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims.

4.5 Repair or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of the buildings as a result of fire or other casualty (unless 66-2/3 per cent or more of the project improvements are destroyed or substantially damaged and all of the apartment owners do not duly and promptly resolve to proceed with repair or restoration), the Council shall arrange for the prompt repair and restoration of the buildings (including any damage to apartments except wall, ceiling, or floor decorations

or coverings or other furniture, furnishings, fixtures or equipment installed by apartment owners individually) and the Council shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a common expense and the Council may assess all the unit owners for such deficit as part of the common charges.

72-9721

If two-thirds or more of the improvements shall be destroyed or substantially damaged, and if all the owners of the apartments therein do not voluntarily, within ninety (90) days thereafter make provision for reconstruction and restoration to the original condition, the Council will forthwith record a notice setting forth such facts, and upon such recording of notice the project shall be sold by the Council or its designated representative, as trustee free and clear of the interests of the apartment owners and of the provisions contained in this Declaration, the plat and the bylaws. The insurance settlement proceeds, and the proceeds from sale of the project shall thereupon be collected by such trustee and after payment of expenses of the sale such proceeds shall be divided according to each owner's interest based in proportion to their respective shares in the general common elements, and upon such division such trustee shall hold the share of each apartment owner in a separate trust account. From each separate account the trustee shall use and disburse the total amount of each account toward the full payment of the following for and on behalf of the apartment owner for whom each account is held:

- (1) the payment of any balance of any first mortgage lien on such owner's apartment;
- (2) the payment of taxes and special assessment liens on such apartments in favor of any taxing entity;
- (3) payment of such owner's share of unpaid common expenses and assessments of the Council;
- (4) the payment of junior liens on such apartment in the order and extent of their priority;
- (5) the balance remaining, if any, to the apartment owner.

The determination of whether 66-2/3 per cent or more of the improvements shall have been destroyed or substantially damaged by

any fire or other disaster or casualty shall be conclusively made by the Council by action of the members of the Council.

ASSESSMENTS AND LIENS

72-9722

5.1 Liability for Common Expenses. Each apartment owner shall be liable for a proportionate share of the common expenses, such share being the same as the undivided share in the common elements which is appurtenant to the apartment as set forth herein to the extent that the same shall be assessed against the owners from time to time by the Council. The common expenses shall include, but not be limited to, all expenses incurred by the Council in performing its duties, obligations and services as authorized or required hereby or by the members of the Council, administrative expenses of the Council, all expenses or expenditures incurred by the Council for repair, replacement, construction, acquisition, maintenance or operation of common elements, reserves for proper Council purposes, costs of enforcing this Declaration, applicable bylaws, rules and regulations or the rights of the Council or its members, professional fees, utilities and such other expenses as shall be authorized by the Council.

5.2 Assessments. The Council shall have the power to assess the owners of the apartments for their respective shares of common expenses, and otherwise as herein provided. The making and collection of assessments against apartment owners for common expenses shall be subject to the bylaws and to the following provisions:

(a) Share of Common Expense. Each apartment owner shall be liable for and shall pay a proportionate share of the common expenses to the extent that the same shall be assessed against the owners from time to time by the Council, and shall share in the common fund, if any, such shares being the same as the undivided share in the general common elements which is appurtenant to the apartments owned by him.

(b) During any period of time in which not all of the buildings are being maintained and operated by the Council (as, for example, when the maintenance and operation of a building are omitted pending reconstruction of such building

after a casualty), that portion of assessments for the common expenses attributable only to the maintenance and operation of the buildings then being maintained and operated by the Council shall be assessed only to the owners of apartments of such buildings and in the proportions which their respective shares in the general common elements bear upon each other.

72-9723

(c) Interest; Application of Payments. Assessments and installments thereon paid on or before 10 days after the date when due shall not bear interest, but all sums not paid on or before 10 days after the date when due shall bear interest at the rate of ten percent (10%) per annum from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

(d) Attorney's Fees. If the Council shall incur any legal expenses, including attorney's fees, to enforce any rights of the Council against an apartment owner, including but not limited to collection of delinquent assessments, such apartment owner shall be liable to the Council for such expenses and the Council may recover the same.

(e) Apartments Owned by Council, if any, shall not be subject to assessment while owned by Council.

5.3 Lien for Assessments. The Council shall have a lien upon each apartment and the interests in the general and limited common elements and common fund appurtenant thereto to secure the payment by the owner of such apartment of his proportionate share of all assessments required or permitted to be levied hereunder or by law, and any other sums which shall become due and owing from such owner to the Council and such lien shall also secure all other expenses including reasonable attorney's fees, incurred by the Council incident to the collection of such assessment or enforcement of such lien.

5.4 Foreclosure of Liens. All liens for assessments made by the Council of Co-Owners, or by the Board when authorized to do so as aforesaid, shall be prior to other liens, except that

such liens for said assessments shall be subordinate, secondary and inferior, and the same are hereby expressly made subordinate, secondary and inferior to:

- (1) all liens for taxes or special assessments levied by the city, county, and state governments or any political subdivision or special district thereof, and
- (2) (2) liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date payment of such assessment for common expenses becomes due. The

The claim of the Council for assessments and the lien securing such claims shall be freely assignable. Such lien for assessments herein provided for may be foreclosed, without prejudice and subject to the aforesaid prior liens, by the holder thereof in the same manner as either a vendor's lien, or as is provided for foreclosure of a contractual deed of trust lien on real property under Vernon's Annotated Civil Statutes of Texas, Art. 3810. No such foreclosure shall affect or impair any such prior liens. The Council in this project, shall have power to bid in the apartment unit foreclosed on at any foreclosure sale, and to acquire, hold, lease, mortgage and convey the same in behalf of the Council.

* The purchaser acquiring title to such apartment unit at any such foreclosure sale, whoever he may be, and his successors and assigns, shall not be liable for the share of the unpaid common expenses or assessments by the Council chargeable to such apartment which became due prior to acquisition of such title at such foreclosure sale, [but such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from] all of the owners of the apartments in this project, including such purchaser or acquirer, [his successors and assigns, on a pro rata basis, to the extent not recovered from the proceeds of such foreclosure sale.

5.5 Status after Foreclosure. Upon the sale or conveyance of an apartment, including sales at foreclosure, all unpaid assessments against the selling owner for his pro rata share of the common expenses and charges shall be first paid out of the sale price or by the pur-

chaser in preference over any other assessments or charges of whatever nature except the following:

- (a) Assessments, liens and charges in favor of state and any political subdivision thereof for taxes due and unpaid on the apartment units; and
- (b) Amounts under mortgage instruments duly recorded.

5.6 Certificate of Assessment. Any prospective purchaser or encumbrancer of an apartment, upon written request being made, shall be entitled to a certificate from the Board as to the amount of unpaid common expenses, if any, of the subject apartment, and such apartment shall not be liable or subject to any lien for any unpaid assessment in excess of the amount set forth in said certificate for the period of time specified therein. If such request for a certificate is not complied with within twenty (20) days of such request, the prospective purchaser or encumbrancer shall not be liable for, nor shall the subject apartment thereafter be subject to a lien for, any unpaid common expenses or assessments due prior to the date of such request.

5.7 Common Fund. All funds collected by reason of assessments of the apartment owners, or otherwise received from the apartment owners proportionately, and all funds received for the use and benefit of, or the account of, the apartment owners (whether derived from insurance proceeds or other source) shall constitute the common fund and shall be held, administered and accounted for by the Council as trustee for the benefit of all of the owners of apartments as set forth herein. The common fund is the property of the apartment owner proportionately and constitutes a part of the general common elements appurtenant to the apartments of the project. The common fund shall be administered and disbursed by the Council according to the terms of this Declaration and as determined by the co-owners from time to time. In addition to other uses authorized herein or by the members of the Council, the common fund may be expended in payment of the common expenses and in reimbursement of the expense of the Council. The funds constituting a part of the common fund shall be held in a separate account or accounts in one or more depositories selected by

the Council under the style Overlook Villa West Common Fund, or such other name as the Council shall select. If the condominium regime shall be terminated, and if the Council shall at such time own any assets in its own right (as distinguished from funds or property of the co-owners administered by the Council) in excess of its liabilities, then any such excess of assets shall be added to the common fund and administered as such.

RESTRICTIONS

6.1 (a) General Common Elements. The general common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the apartments.

(b) Nuisances. No nuisances shall be allowed upon the project, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or make any use of the general or limited common elements which will constitute a nuisance or annoyance to the residents of other apartments.

(c) Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the project nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the project shall be the same as the responsibility for the maintenance and repair of the property concerned.

(d) Regulations. Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by the board of directors of the Council.

(e) Proviso. Notwithstanding other provisions hereof, until Developer has completed and sold all of the apartments,

neither the apartment owners nor the Council shall interfere with the completion of the contemplated improvements and the sale of the apartments. Developer may make such use of the unsold units and common areas as may facilitate such completion and sale, including but not limited to maintenance of a sales office, the showing of the property and the display of signs.

6.2 Rental. Each apartment owner shall have an absolute right to lease or rent his apartment upon such terms as he shall approve, subject to all provisions and restrictions herein set out.

6.3 Use. Each apartment shall be used and occupied only for housing accommodations and no apartment shall be altered, remodeled, subdivided or converted into more than one housing accommodation without the approval of the Council.

6.4 Non-partition. The general and limited common elements shall remain undivided and shall not be the object of an action for partition or division of the co-ownership so long as suitable for a condominium regime unless the owners of all apartments shall otherwise consent in writing.

TRANSFERS

7.1 No Severance of Ownership. The appurtenant interests including interests in the general and limited common elements, shall not be severable from the ownership of the apartment to which appurtenant, and no attempted or purported severance of such ownership shall be effective. No apartment owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his apartment without including therein the appurtenant interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest so omitted, even though the latter shall not be expressly mentioned or described therein, or even if a portion thereof shall be purported to have been expressly excluded. No part of the appurtenant

interests of any apartment may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the apartment unit to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the appurtenant interests of all apartments.

7.2 Sales and Mortgages. The Council shall have a prior and preferential option and right of first refusal to lease, purchase or acquire any apartment and appurtenances thereto included hereunder upon the terms and conditions hereinafter set forth. No apartment owner may sell or lease his apartment and appurtenances thereto, or any interest therein, except upon compliance with the following provisions:

(a) Through December 31, 1974, such option and right of first refusal to purchase shall be exclusive and any owner desiring to sell his condominium unit shall offer the same to the Council (or to its designee acting on its behalf or on behalf of the owners of all other apartments, if the Board deems advisable) at the same price paid by such apartment owner, which would permit the Council or its designee to assume the then existing unpaid balance on the first mortgage indebtedness and the remaining portion of said purchase price to be paid in cash. The apartment owner must notify the Board in writing of such intention and within thirty (30) days after receipt of such notice, the Board may elect, by notice to such apartment owner, to purchase such condominium unit upon the terms and conditions contained in this option. If the Board shall so elect to purchase such apartment, or to cause the same to be purchased by its designee, closing of the purchase shall take place at the office of the attorneys for the Council within forty-five (45) days after the giving of notice by the Board of its election to accept such offer. At the closing of the transaction the owner shall convey the condominium unit to the Council, or to its designee, by deed in the form approved by the Board, with taxes, assessments and loan payments prorated to the date of such closing and with the title to be free and

clear of all liens and encumbrances other than the first mortgage indebtedness. If the Board or its designee shall fail to accept such offer within thirty (30) days as hereinabove specified, the offering apartment owner shall be free to contract to sell such condominium unit in accordance with the terms of paragraph (b) hereinafter set out.

(b) If the Board should decline to accept the offer hereinabove set out in paragraph (a) or if at any time an apartment owner should receive a bona fide offer (hereinafter called "outside offer"), to sell his condominium unit, which he intends to accept, he shall give notice to the Board of such offer and of such intention, the name and address of the proposed purchaser, the terms of the proposed transaction and such other information as the Board may reasonably require, and shall offer to sell such condominium unit to the Council (or to its designee acting on its behalf or on behalf of the owners of all other apartments, if the Board deems advisable) on the same terms and conditions as contained in such outside offer. The giving of such notice shall constitute a warranty and representation by the apartment owner who has received such offer, to the Board on behalf of the Council that such apartment owner believes the outside offer to be bona fide in all respects. Within thirty (30) days after receipt of such notice, the Board may elect, by notice to such apartment owner, to purchase such condominium unit, itself or by its designee on the same terms and conditions as contained in the outside offer and as stated in the notice from the offering apartment owner. If the Board shall elect to purchase such condominium unit, or to cause the same to be purchased by its designee, the purchase shall close at the office of the attorneys for the Council within forty-five (45) days after the giving of notice by the Board of its election to accept such offer. At the closing, the apartment owner shall convey the same to the Council, or to its designee, by deed in the form approved by the Board, and all taxes,

interests, assessments and payments shall be prorated to the date of closing. If the Board or its designee shall fail to accept such offer within thirty days as aforesaid, the offering apartment owner shall be free to contract to sell such apartment, together with the appurtenant interests, within sixty (60) days after the expiration of the period in which the Board or its designee might have accepted such offer, to the outside offeror, on the terms and conditions set forth in the notice from the offering apartment owner to the Board of such outside offer. Any such deed to an outside offeror shall provide that the acceptance thereof by the grantee shall constitute an assumption of the provisions of the Declaration, the bylaws and the rules and regulations, as the same may be amended from time to time. If the offering apartment owner shall not, within such sixty (60) day period, contract to sell such apartment, together with the appurtenant interests, to the outside offeror on the terms and conditions contained in the outside offer, or if the owner shall so contract to sell his apartment within such sixty day period, but such sale shall not be consummated pursuant to the terms of such contract, then should such offering owner thereafter elect to sell such apartment together with the appurtenant interests, to the same or another outside offeror on the same or other terms and conditions, the offering owner shall be required to again comply with all of the terms and provisions of this Section 7.2.

(c) The provisions hereof shall apply to and include gifts of the condominium unit or leasing thereof for a period of more than ninety days to persons other than those hereinafter excepted in paragraph 7.3.

7.3 Exceptions. The provisions of Section 7.2 (b) shall not apply with respect to any gift, sale or conveyance by an owner of his condominium unit to his spouse or to any of his issue, antecedents, siblings, or the spouse of any such person, or any one or

more of them, or to the owner of any other apartment in Overlook Villa West or to the Council, nor to any sale of an apartment owned by the Council, nor to the initial sale of each apartment by Developer, nor to the acquisition or sale of a condominium unit, by a mortgagee herein authorized who shall acquire title to such unit by foreclosure or by deed in lieu of foreclosure. However, the provisions of this section shall apply with respect to any purchaser of any such apartment from such mortgagee and to any resale thereafter. Any apartment owner shall be free to devise his apartment by will, or to pass the same by intestacy, without compliance with Section 7.2.

7.4 Sales Voidable. Any purported sale of an apartment in violation of Section 7.2 shall be voidable at the election of the Board; or at its election the Council shall have the right and option to purchase the apartment from the purchaser in any such purported sale in violation of these restrictions at the same price and upon the same terms at which such purported purchaser shall have acquired any such interest in such apartment.

7.5 Consent of Owners to Purchase Apartment by Board. The Board shall not exercise any option hereinabove set forth to purchase any apartment without the prior approval of a majority of the owners, or such greater number as shall be specified in bylaws of the Council.

7.6 Release by Board of Right of First Refusal. The right of first refusal contained in Article 7.2 may be released or waived by the Board in which event the apartment together with the appurtenant interests, may be sold, conveyed, free and clear of the provisions of such section.

7.7 Certificate of Termination of Right of First Refusal. A certificate, executed and acknowledged by the Secretary of The Board of Governors, stating that the provisions of Article 7.2 have been met by an apartment owner, or have been duly waived by the Board and that the rights of the Council thereunder have terminated, shall be conclusive upon the Council and its Board and members in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any apartment owner who

has in fact complied with the provisions of Article 7.2 or in respect to whom the provisions of such section shall have been waived, upon request.

7.8 Financing of Purchase of Apartments by Council. Acquisition of apartments by the Council may be made from the assets, if any, or on the credit of, the Council, as such, or from the common fund (if on behalf of the co-owners as such) or if such funds are insufficient, the Board may levy an assessment against each apartment owner in proportion to his ownership in the common elements, as a common charge, which assessment shall be enforceable in the same manner as provided herein: or the Board, in its discretion, may cause the Council to borrow money to finance the acquisition of such apartment, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the condominium acquisition of Real Property above described.

7.9 Condemnation. If required by the terms of a mortgage, vendor's lien or deed of trust securing the purchase obligation of any apartment in the condominium, the Council shall purchase the undivided interest of any such apartment which has been condemned in total. The mortgagee of such apartment shall be notified of the condemnation proceedings and shall have the right to participate therein.

MISCELLANEOUS

8.1 Amendments. This Declaration shall not be changed or amended except with the written consent of three-fourths (3/4) of the total ownership of the condominium units and the written consent of all mortgagees of such condominium units. The president and Secretary of the Council shall certify that the required consents have been obtained for any such amendment and such amendment shall become effective upon the date of its filing in the Condominium Records of Travis County, Texas.

8.2 Notices. Notices provided for in this Declaration or the bylaws shall be in writing and shall be addressed to the Board at the address of the Board as such address may be established from time to time and of which each unit owner shall be notified. Notices to the apartment owners shall be mailed or delivered to

the mailing address of their respective apartments or to such other address which any apartment owner may designate by notice thereof in writing to the Board.

8.3 Notices to and Approval of Lenders. If required by the terms of a mortgage, vendor's lien or deed of trust securing the purchase obligation for any apartment in the condominium, the Council through its Board of Governors, upon written notice of such terms, shall:

- (a) Provide the lender with thirty (30) days written notice of any change or amendment in this Declaration, or in the Articles of Incorporation or bylaws of the Council.
- (b) Notify the lender of assessments affecting its security interest that are thirty (30) days delinquent.
- (c) Obtain written approval from the lender to:
 - (1) Fail to employ professional management.
 - (2) Change the undivided ownership interests.
 - (3) Partition or subdivide units.
 - (4) Terminate the condominium.

8.4 Compliance. Each apartment owner, his family, lessee and guests, shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration or in the deed to his apartment. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both maintainable by the manager or Board of Directors on behalf of the Council of Co-Owners or, in a proper case, by an aggrieved apartment owner. Failure to enforce any provision of this Declaration, the bylaws or administrative rules and regulations shall not constitute a waiver of the right to enforce the same thereafter.

8.5 Severability. If any provision of this Declaration or in the bylaws attached hereto or any part thereof or the application thereof in any circumstances shall be held invalid or unenforceable, the validity or enforceability of the remainder of the Declaration

72-9734

or Bylaws or the application of any such provision or part thereof in any other circumstance shall not be effected thereby.

8.6 Covenant. The provisions of this Declaration shall constitute a covenant and easement running with the land described above and shall bind Developer, its successors and assigns.

EXECUTED this 7 day of February, 1973.

LOBUE AND ASSOCIATES

By: Anthony A. LoBue

General Partner

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

BEFORE ME, the undersigned authority, on this day personally appeared Anthony A. LoBue, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 7th day of February, 1973.

NOTARY SEAL

(S E A L)

Donna Y. White
Notary Public in and for
Travis County, Texas

DONNA Y. WHITE
My Commission Expires
June 1, 1973

72-9735

OVERLOOK VILLA WEST

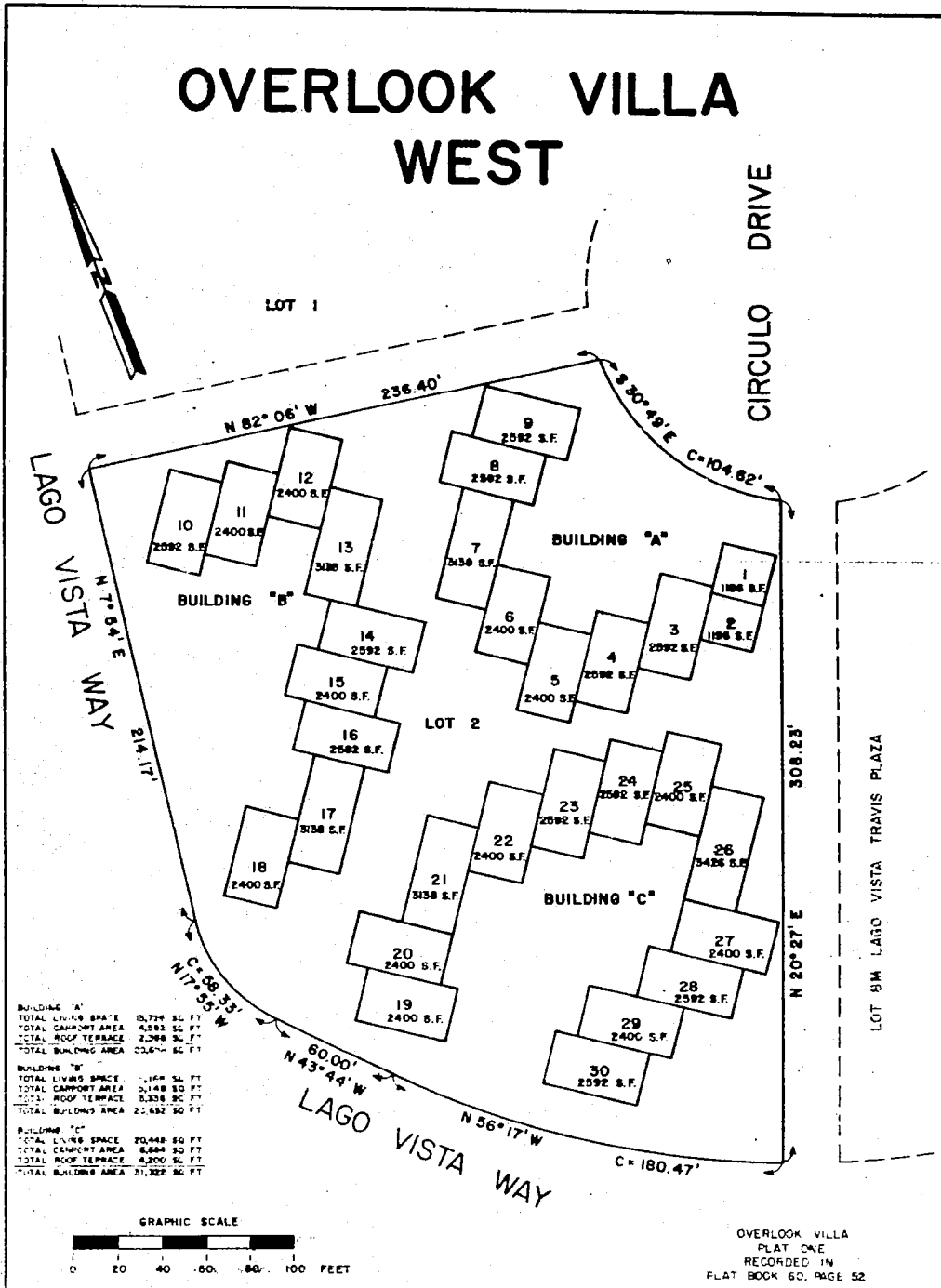


EXHIBIT A
419